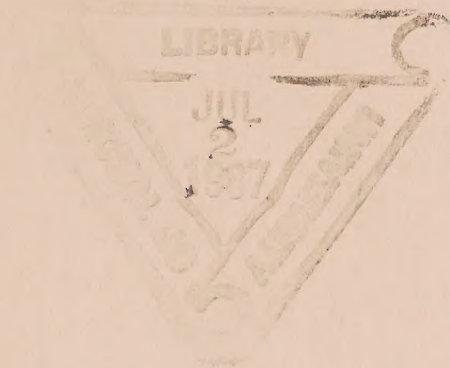


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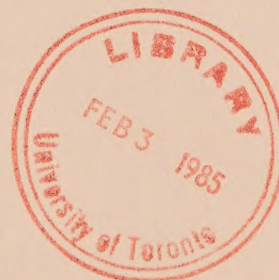
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STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES, BOARDS
AND COMMISSIONS

PREMATURE DISCLOSURE OF COMMITTEE REPORT
PREMATURE DISCLOSURE OF CONFIDENTIAL MATERIAL
APPOINTMENTS IN PUBLIC SECTOR
TELEVISION IN LEGISLATURE
ORGANIZATION

THURSDAY, JANUARY 16, 1986



STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES,
BOARDS AND COMMISSIONS

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Turner, J. M. (Peterborough PC)
Warner, D. W. (Scarborough-Ellesmere NDP)

Substitutions:

Smith, E. J. (London South L) for Mr. Bossy
Swart, M. L. (Welland-Thorold NDP) for Mr. Martel

Clerk: Forsyth, S.

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Eichmanis, J., Research Officer, Legislative Research Service
Malcolmson, P., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS
AND AGENCIES, BOARDS AND COMMISSIONS

Thursday, January 16, 1980

The committee met at 10:31 a.m. in room 228.

PREMATURE DISCLOSURE OF COMMITTEE REPORT

Mr. Chairman: The first matter on the agenda is the draft report on premature disclosure. Actually, there are two. They are on the select committee on economic affairs and the select committee on energy.

The committee has previously deliberated on these two matters. Therefore, the report is essentially a reflection of the committee's previous deliberations, with some research into the precedents and what not for the two cases.

Do members have any comments?

Mr. Treleaven: Yes, I have. On page 2 on the first one, the energy committee leak, those last two paragraphs are almost like the judge saying, "I find that you did not do it, but do not do it again." It states: "We find no breach of privilege occurred." In the last paragraph it says, "However, we urge all members to be more careful," more prudent when discussing and so on.

Mr. Mancini: That is what you told the Bank of Commerce.

Mr. Treleaven: Is that what we did, Remo?

Mr. Chairman: I am not so sure I want your warm body here, Remo.

Excuse me for saying so, but I thought that accurately reflected what the committee wanted to say, that in this instance nobody's privilege was technically breached, but perhaps some unwarranted comments were recorded in newspapers that were not helpful.

Mr. Treleaven: You just used the word "technical." Do you want to say in the second-last paragraph that there was no technical breach of privilege? That distances the two, and then "Be more careful"?

Mr. Chairman: Are we agreed to insert a word like "technical" there?

Mr. Turner: Why?

Mr. Chairman: I hear a request from a committee member to do it. That is why.

Mr. Treleaven: Right, but then why put in the next paragraph, "Be more prudent"?

Mr. Turner: That is just a general--

Mr. Treleaven: "Do not do it again."

Mr. Turner: This has been a problem for as long as I have been here, and it will continue to be.

Mr. Chairman: We are just trying to make members aware that there is such a thing as trying to prepare a report, and that before the report is tabled, it is not terribly wise for members to do a lot of commenting about it. It is a very difficult area to do.

Mr. Warner: From what we heard, it seems that a breach of privilege occurred, but we can do nothing about it. That is more to the point. I have found the whole thing frustrating. Because the material got out before it was released in the House to other members, a breach of privilege resulted. There is nothing we can do about it.

Mr. Treleaven: Are you referring to the first instance or the second?

Mr. Chairman: This is the energy committee.

Mr. Warner: The energy committee.

Mr. Chairman: There is a different recommendation on the second one.

Mr. Warner: Yes, but there is nothing we can do about it; that is the frustrating part. Because we do not know who did it, there is nothing we can do about it. We do not have any opportunity to bring an individual before the House or to take any punitive action.

Mr. Treleaven: My bottom line is that we do not know whether any breach of privilege did occur. We do not know whether any information came from that or whether it was all speculation. We were led to understand that some things reported in the media may be in there and some others are wide of the mark.

Mr. Warner: It did not come out of a crystal ball.

Mr. Turner: How do you know?

Mr. Chairman: Okay, help me out here. Does anyone feel very strongly that the report inaccurately reflects the feelings of the committee?

Mr. Warner: Yes.

Mr. Mancini: How do you want it changed?

Mr. Warner: I would change it to say the committee believes that a breach of privilege occurred but realizes that, because we cannot identify the source, there is absolutely nothing we can do about it.

Mr. Chairman: I would accept that if someone were able to point out to me an actual quotation from the committee report. In the first instance, there was no direct quotation from a committee report available. We went through the newspaper reports and the reports from various members who came before the committee and said, in essence, yes, we talked about the matters that were before the committee, but no quotation from a committee report was presented in public that I saw.

Mr. Warner: The wording was not identical; the message was.

Mr. Chairman: That is right. The message may have been the same, but the message may have been a good guess or an individual member's opinion. The only thing that would constitute a breach of privilege would be actual pieces of paper changing hands and quotations being used.

Mr. Warner: I do not think I am a suspicious person, but after I read the material presented, it seemed to me that the message delivered was identical to the report; only the wording was slightly different. It does not take a lot of intelligence to figure out how you accomplish that.

Maybe no other members were convinced, but I was convinced it was reasonable to assume there had been a leak of material. I cannot reasonably assume the identity of any individual or individuals. Therefore, in my mind a breach of privilege occurred, but there is nothing I can do about it because I am not about to accuse any individual without having reasonable grounds. I am frustrated by it because it affects all of us.

I do not like to see this happen. I do not think it should happen. It bothers me, but also, to be reasonable about it, we cannot run around accusing people unless we have some solid grounds, which we do not have.

Mr. Chairman: Any other comments on it? Can I have a motion to accept or reject the report?

Mr. Warner: You have always worked on consensus--

Mr. Chairman: The consensus, I believe, is expressed in the report. We may have a difference of opinion on it.

Mr. Warner: Do you want to test it first before you take a vote?

Mr. Chairman: I need a motion and a vote.

Mr. Turner: I will move it.

Mr. Chairman: We have a motion from Mr. Turner to accept the first report on the premature disclosure of the select committee on energy.

Motion agreed to.

PREMATURE DISCLOSURE OF CONFIDENTIAL MATERIAL

Mr. Chairman: Now we will move to the second matter, which is a referral from the House on the premature disclosure of the select committee on economic affairs.

In this one it did appear that actual quotes were used. In other words, it was reasonably apparent that the report itself, the pieces of paper, had been released prematurely. The difficulty here is almost identical to the one Mr. Warner suggested when we went through it last week. It is relatively straightforward that there actually was a leak. The problem again is that unless the House is prepared to equip us with Dick Tracy and company to investigate, it will be very difficult for us to identify an individual, either a member or an employee of the House, who might have done it.

What you ask the clerk of the committee to do is what he has done: that is, to go through our previous report and the techniques that have been used in other places to try to identify documents and information that are not yet public. The recommendation in the body of the report is to try to identify those as being confidential in nature, to suggest some techniques that committees might use if they wanted to--for example, provide background material and briefing to reporters and others who may have an interest in the matter. We suggest the technique we use at budget time, a lockup or something of that nature, so it is clear to all concerned that we are giving them background information, but it is not public until it is tabled in the House.

10:40 a.m.

In the second matter we are saying essentially that there was technically a breach of privilege here. We think members should be made aware that some documents are confidential for a while, that we should be careful to identify specific documents that are not yet public and that we should find alternatives for providing background information to others.

There is your recommendation. The heart of it is on page 4, and then it goes on to explain some of the background and techniques that are used in other places. Again I would say it reflects pretty accurately the decision reached by the committee last week.

Mr. Mancini: I refer the committee to page 10. Right under the discussion on lockups in the middle of the paragraph it states:

"The committee recommends the use of 'embargoes' also be discussed with the legislative press gallery. This approach has been used without serious abuse by select committees of the House of Commons of the United Kingdom. The media representatives and others receiving the report in advance of presentation in the House would agree and be honour bound not to release the report prior to the time stated on the report. Any breach of confidence could be considered to be a serious offence and dealt with in an appropriate manner of the House."

I am not sure how that addresses in any way the problem we are discussing. We are discussing the matter of reports being leaked purposefully or with naïveté to individuals of the press gallery or others so that the information ends up on the front pages of the next morning's newspapers.

In my view, the use of embargoes in conjunction with the legislative press gallery would cause more problems than it would solve. We are now going to come in and tell the press gallery: "Here is the information two days in advance. We do not want any of you guys using it."

Mr. Chairman: No. Let me try to clarify this. Perhaps some of the difficulty is that this is a rather unfamiliar practice here. The closest thing we have to it is that on occasion, notably around a budget, we use a lockup technique whereby the media and some other people are invited to a briefing session, usually on the day the document is presented. They are provided with staff to answer questions and given an opportunity to write their stories. None of it is released until the actual budget is tabled in the House.

Usually, if it is in an evening session, the lockup begins around 10 or 11 o'clock in the morning. They have a full day to get background information. Staff are made available to provide them with more statistics, interpretations--all of that. The media participate in the lockup and actually write their stories during the course of the day. At the very moment a budget is delivered, stories are also delivered. There is an instantaneous aspect to the process.

The British House has a different practice, as some of those who have been there may recall. It is foreign to us. They use an embargo whereby the media simply agree not to publish certain documents until a certain time. It stems from their practice, which seems a little weird to us, of making several areas of the House at Westminster neutral ground where secret information can be gathered.

It has become common practice there for ministers to go into certain areas of the House and lay out government policy and the stories are written. The minister is not releasing the document officially. I know this is a strange animal. It allows the government to release something and then stand back and say, "But it is not government policy yet." In other words, they can kite fly, try things on for size, do whatever they want.

You may be interested to know there are several bars at Westminster. One bar is for members only, one is for media people only and the third is one of these places where they trade information. They use it in a different way than we do here. There is a whole corridor where this occurs as well. You try it on for size, and a media person will say in some cases: "I will take that as an unofficial statement of what you are going to do. I will write my story. I know my source." The media never reveal formally that the minister told them that. They just write it.

On other occasions a minister may say, "I am going to tell you what we are going to do now, but you have to agree not to release it until two o'clock this afternoon or 10 o'clock tomorrow morning." I do not know whether you want to get into all of those techniques, but they are used at Westminster and it is possible to do it.

Mr. Turner: There is another part to it. There is a different understanding between political parties there. We are entering into this era over here as well. A party in opposition would be seen by our standards as co-operative or helpful to the party in government because the party in opposition knows it has to act in a more responsible manner if it is going to be the government, maybe not the next time but the time after. That brings a completely different approach. Members are, if not more cautious, certainly more discreet.

Mr. Warner: I have always exercised that for that very reason.

Mr. Turner: Certainly you have. I have noticed that.

Mr. Warner: For the very reason you mentioned.

Mr. Chairman: It is a good thing you have privilege in here.

Mr. Warner: Have these interesting suggestions about embargo and lockup for the items we are talking about been discussed with our press gallery?

Mr. Chairman: We have not had formal discussions about it. The reason I encourage some discussion of these techniques is that there is a very real problem here. Under the current schedule a committee report is tabled around three o'clock in the afternoon--a little bit before or after, at about the same time as the entire gallery is outside in the scrum. You can have the world's greatest committee report, as we often do, yet there is absolutely nobody in the gallery to report it. At about four o'clock, when they go back upstairs, they may find the report in their office.

We have to find ways to schedule the committee reports at a different time during the day to allow the media to write their stories in the morning and release them in the afternoon. The tabling of the report can be handled in a number of ways. For example, this morning we are finalizing reports formally by votes with Hansard going. There is not much secret about the committee reports we are tabling. We will table these reports formally this afternoon. We are using one technique whereby, when a committee determines that there is no need for secrecy, you can finalize a report with a Hansard and the media can be present, so there is no secrecy at all.

In another situation we may decide that what we are going to report this afternoon is very important and should not be made public at different times; it should all happen at the same time. However, we may want to provide media people with an opportunity

in the morning to get background information to begin to write their news stories. You may also want to say, "We do not want this published until four o'clock this afternoon." It is a slightly different technique.

Mr. Warner: Is this embargo concept, which I think at first glance would work extremely well for the print media, a disadvantage to the electronic media? The papers are getting the material well in advance and they can prepare their stories. The television and the radio obviously have to wait.

10:50 a.m.

Mr. Chairman: It is difficult to say whether there is any great advantage to it. One of the reasons it would be useful to talk to people in the gallery would be to find out whether there is a big advantage pro or con. The electronic people have an advantage no matter how you do it, simply because when a hot news story is tabled in the House at four o'clock in the afternoon, a radio or television reporter can put it on the air at 4:30 or, at the very latest, six o'clock. A print reporter will not be able to publish that and get it into people's hands until probably late that evening or the next morning. If there is an advantage, it will be one that changes changes back and forth.

Are there any other comments?

Mr. Warner: It sounds good to me.

Mr. Chairman: May I then have a motion to adopt that?

Mr. Warner: Sure.

Mr. Chairman: Mr. Warner has moved the adoption of the report.

Motion agreed to.

Mr. Chairman: Those two reports will be tabled this afternoon.

APPOINTMENTS IN PUBLIC SECTOR

Mr. Chairman: The second matter before the committee this morning is to firm up now we will continue to deal with the matter of appointments in the public sector.

Just to review this for those who are not always with us, the committee has done a fair amount of paper review on what other jurisdictions do. We have also had the opportunity to meet and discuss the process with people in state legislatures, where it is a more common practice. We have advertised for opinions from the public and have received a number of them. We will present them to you next week, although since some of them came in through members, you may have seen them.

About a dozen people have indicated they would like to appear before the committee. We will have to schedule a session

where a public hearing can be held. Probably one or two sessions would handle it, according to indications we have now. There may be others who wish to appear.

The first order of business is to schedule something like that. We are a little backed up in the committee. I would very much like to have this report finalized by the end of this session, if that is possible.

Let us start with that. Can we have some discussion about whether you--

Mr. Warner: What else do you have?

Mr. Chairman: We have a little more follow-up work to do on broadcasting the proceedings. That about clears our agenda until the end of the session.

Mr. Warner: Then what would prevent us from finishing the patronage stuff? I do not see why we cannot tidy this one up.

Mr. Chairman: The only problem I see is the physical one of holding hearings. When the House is in session we are limited to Thursday mornings. It becomes a little awkward for members of the public who may want to appear. An option would be to seek agreement from the House leaders to sit for longer hours, like an afternoon or an evening.

Mr. Mancini: Or Saturday morning.

Mr. Chairman: If you want to sit on a Saturday morning, you can do that.

Mr. Warner: Or a Sunday afternoon.

Mr. Morin: What kind of response do we have so far?

Clerk of the Committee: We have had 40 or 50 submissions.

Mr. Chairman: Is that all?

Mr. Morin: From groups or from individuals?

Clerk of the Committee: Individuals and groups.

Mr. Morin: From all across the province? Was any particular area more interested?

Clerk of the Committee: No, from right across the province. There was a bit of confusion with some because they thought we were advertising to take applications.

Mr. Warner: In which case you got 20,000.

Mr. Chairman: What appears possible, then, would be to proceed in the next couple of weeks with public hearings and to invite those who have indicated that they want to appear to come before us, probably next Thursday. The following Thursday might be a little better.

Perhaps if we get an indication that people cannot come during the morning, we will try to make some arrangements with the House leaders to sit on a Wednesday or to sit concurrently with the House on a Thursday.

Mr. Warner: What about an evening?

Mr. Chairman: An evening? That is what I mean when I say we would sit on a Thursday. We would perhaps do morning, afternoon and evening sessions. We might not sit all the way through, but we could provide a couple of hours in the morning, a couple of hours in the afternoon and an hour or so in the evening for the convenience of the public.

Mr. Warner: Right; I agree with that. I was going to suggest a Monday evening, if that suited members, because there are no other committees scheduled, but the House is sitting.

Mr. Chairman: No, that does not suit the members. The House is in session on Mondays. It becomes awkward when you suggest different days, because the House leaders have some difficulty in allocating members to committees. Once we move off the scheduled days, it complicates life for them.

Mr. Warner: But no committees are scheduled for Monday night.

Mr. Chairman: There will be. Do not forget there are a lot of estimates that have to be dealt with yet.

Mr. Mancini: Most of us sit on more than one committee.

Mr. Chairman: Yes, that is the problem.

Mr. Mancini: For example, on the standing committee on resources development we sit on Wednesdays, Tuesday nights and Thursday nights.

Mr. Morin: What about in the mornings, Monday or Tuesday morning?

Mr. Mancini: Tuesday morning is caucus.

Mr. Morin: What about Monday morning?

Mr. Chairman: We have travel problems for a lot of members.

Mr. Warner: It will be members of the public.

Mr. Treleaven: Mr. Morin and I have a problem in that we have to be able to spell the Speaker at all times, and for committee of the whole House it has to be one of us; the Speaker cannot take it. No matter what time you take, Gilles or I will be in and out.

Mr. Warner: However, the chairman is suggesting we could handle this in one evening in terms of the presentations.

Mr. Chairman: We could try to do that. My difficulty is that I am reluctant to say to people, "You must come on a Thursday morning" when I know there are people who have to travel and people who have other obligations and cannot come during the daytime. We should at least make the effort to provide an occasion when it is convenient for them.

Mr. Treleaven: What about Thursday night? If the members are here for Thursday morning, presumably they will be here for Thursday night.

Mr. Warner: I would agree to that, although it conflicts with my other committee. I will make some arrangement with the standing committee on administration of justice if we have permission to sit Thursday evening to tidy up all the loose ends we have. I would be prepared to manage that. Perhaps we could handle all the submissions if, as the chairman suggests, we had one Thursday morning, afternoon and evening.

Mr. Chairman: How do you feel about a proposal that for the next two Thursday committee meetings we do the public hearing section of this process? Next week we will do it in the morning only. For the following week we will attempt to get permission to sit in the afternoon and evening, if it is necessary. That gives them two weeks to choose from, and on one of those occasions they can come during the afternoon or evening.

Mr. Warner: What about the research component to this exercise?

Mr. Chairman: It is done.

Mr. Warner: Is it done? Does it include material other than what we received from New York and California?

Mr. Chairman: Yes.

Mr. Warner: Do you have the other?

Mr. Chairman: Yes, except from the federal House. You have a portion of that now, and a bit more information will arrive later. You now have a memo from John Eichmanis on the matter. We will need to spend some time--and maybe we can get started on it this morning--it helps if one can give some direction to staff who are doing this about what your inclinations are. It speeds up the preparation of the report. Maybe now we should go over the report from John on the areas that should be included in the report and the decisions the committee will have to make, etc.

The order of the House is that "the committee also have power to examine and report on the methods by which it believes appointments should be made to agencies, boards and commissions to which the Lieutenant Governor in Council makes some or all of the appointments, and all corporations in which the crown in right of Ontario is a majority shareholder."

This includes 596 agencies, boards and commissions and several thousand order in council appointments. Excluded from the

terms of reference are deputy ministers appointed by order in council and appointments made by ministers pursuant to statutory or other authority, so there are some exclusions.

Mr. Treleaven: Specifically in our instructions?

Mr. Chairman: Yes.

Mr. Treleaven: Incidentally, how many of these statutory appointments are there?

Mr. Mancini: You should know that.

Interjection: Do you mean by ministers?

Mr. Treleaven: No. It says appointments made by ministers. How many is that? Are we talking about a dozen or so, or are we talking--

Mr. Eichmanis: Most of these would be advisory. In other words, where the minister under the legislation has the right to appoint an advisory committee under the Education Act, he can appoint advisory committees dealing with the curriculum. These are not order in council appointments; they are appointments that the minister has a right to make under the act. There are not many of those. I cannot give you an exact number, but there are not all that many.

Mr. Treleaven: Okay.

Mr. Chairman: The second item in Mr. Eichmanis's report is officers of the House and officials reporting to the House. In trying to establish categories for purposes of sorting, this is one area I think you should consider. Anybody who is appointed as an officer of the House or who it is suggested reports directly to the House seems to be in a separate category.

That would include people such as the officers of the assembly, the Clerk, the First Clerk Assistant, the Sergeant at Arms, the administrator and the executive director of the library. The Ombudsman has a committee to himself. There is the chief electoral officer, the chairman of the Commission on Election Contributions and Expenses, the Provincial Auditor and the commissioners of the Ontario Electoral Boundaries Commission.

Mr. Mancini: I find this to be very important. We should spend a lot of time on those appointments.

11 a.m.

Mr. Chairman: I think that establishes a framework. Obviously, at some time we will have to add more or exclude some, so you will be asked to make judgement calls. In that general category we are trying to identify people who are directly related to the work of the assembly. The impression from previous discussions is that it should be a separate category. I do not know whether you want to call them employees of the House or not, but they are people who have a special kind of relationship. They

do not really work for the government. They are not given jobs by the Premier or by the government; they are given jobs by the Legislative Assembly of Ontario.

That is one grouping. I suggest it would be appropriate to think about and to report on techniques whereby we might identify those people, how they would get their jobs in the first place, how their jobs would be reviewed and terminated and what their relationships are to the assembly. That is a kind of framework for that.

Next, we need to do some interpretation of the committee's mandate. We look for touchstones such as: How do you select nominees? How do you review the credentials? How does the Legislature itself review them? As we saw in other jurisdictions, this can be a very complicated process if you want it to be. I think it will answer the question this committee has always asked: How did you get to be appointed?

Mr. Treleaven: But you can also solve the unemployment problems of Ontario by setting up the same machinery as we saw in several jurisdictions in the United States.

Mr. Chairman: Okay. The next category is going to be selection. It goes into that in a bit more detail than we have done before. We are looking for the mechanism that informs the public that such appointments are made. For the first time we now have, collated into two volumes, all of the appointments.

That is now a matter of public record, if the public wants to search it out, but it is not broadly known information. One obvious way to make it known would be to use the official record of the proceedings here, the Gazette. I do not think the Gazette competes with Time and Life, but it is in the public library, it is in municipal council offices--

Mr. Treleaven: Every lawyer's office.

Mr. Chairman: --every lawyer's office, yes, and all of that.

You may want to consider circulation of the master list of agencies--at the Congress they call it the plum book--to make sure it is available in libraries. There should be, I would guess, two or three places in every community in Ontario where you can go and get this information.

The next thing is when you go to actually search out these people, where do they send their résumés? Who is responsible for sorting that? Obviously, the Premier's office, like an American governor's office, will continue to play a major role in this, so a process has to be developed that we can track so we know how it is done. We are aware of how a previous government did it and we have some knowledge of how the current government is doing it. You may want to decide that, in addition to going in and out of the Premier's office, the Civil Service Commission may have something and the Management Board of Cabinet may have something, or you might consider a special office where that would be done.

Second, on the review of credentials, we saw in the American jurisdiction that this can be very complicated. It infringes on everybody's rights. They seem to deal with it as a matter of course.

The committee seemed to have some hesitation about going quite that far, but you do have to think about how extensive you want the background check to be. Would you want to go into work history, academic and other qualifications? Financial disclosure seemed to be a major component of that. They did a lot of research into criminal records and background checks.

Mr. Treleaven: And they had all of the cops investigate and talk to all the neighbours, all the business associates, all the relatives.

Mr. Warner: We missed that.

Mr. Chairman: It seems to be increasingly difficult to focus your attention this morning, Mr. Warner. Shut up. Focus your attention just a touch.

Somehow a process has to be put in place. You will have to turn your mind to how extensive that process should be, what you think is important, what you think is not worth bothering with. Then you go to the selection and review processes to see how they fit into different categories.

To summarize my impressions, what I heard you say is that the process gets categorized. Some appointments are major ones made by the Premier, the House or whatever, which receive a thorough scrutiny and actually get dealt with by a committee of the House before the appointment is confirmed. In other words, a committee can say yes or no.

Some are appointments that you say the Premier has the right to make. We have the obligation to scrutinize them, and a committee of the House will do that automatically as a matter of course.

Some appointments are of less importance. You may want to say that for a 30-day, 60-day or 90-day period this appointment stands, but during that period a committee of the Legislature may call the person to appear before it to confirm or scrutinize the appointment.

We saw many different techniques used to sort it all out, and the result I thought you arrived at was that some appointments will always get scrutiny by a committee and some may be looked at by a committee in a somewhat less detailed way. The provision would be that all appointments have the potential of being scrutinized by a committee of the Legislature. It probably means that if, for example, we appoint a new Clerk of the House, that process will be actually done by a committee of the Legislature. If the Premier appoints someone to the head of a major agency, he clearly has the right to make that appointment, but a committee of the Legislature has an obligation to scrutinize it.

Some appointments may be to a conservation authority, a nousing authority or something like that. In most situations we would not do it, but we want a provision saying that for 90 days it is on a committee's agenda. If the committee wants to, it can scrutinize it.

Mr. Treleaven: You are ducking around with words there. Are you suggesting that a committee of this House have a veto power?

Mr. Chairman: No.

Mr. Treleaven: No. In no case do we have veto. We either recommend or do not recommend.

Mr. Chairman: Yes. The distinction I heard you make is that for officers of the House, a committee would actually make the appointment; so in a sense there is a veto power, a power to hire and fire.

I thought I heard you say that the Premier in many instances has a clear right to appoint someone and we have a clear obligation to scrutinize him, but we cannot stop the appointment. You may want to make some distinction here. You may say that for some jobs a committee can block an appointment, but in most jurisdictions it is fairly clear that some branch of the executive--the president, the governor or whoever--has a clear right to appoint and the best the legislative body can do is scrutinize the appointment.

Mr. Treleaven: I took the bottom line to be that if the governor or whoever got recommendations at all the different levels--subcommittees, committees, etc.--washed it through and got recommendations, the appointee ultimately made it. However, if at some point it bogged down, got lost in the shuffle and no recommendation came out, inadvertently or otherwise, he usually withdrew his appointment or did not make it. It just disappeared if there was no recommendation, and that was the vehicle by which he used discretion. There was no veto, but it was extremely persuasive.

Mr. Turner: Yes, if there is extreme displeasure.

Mr. Chairman: Yes. You would never be able to take out of this the political process that is at work everywhere. Suppose we said the Premier of Ontario had a God-given right or something to make this appointment. If he made a terrible choice, which was subject to scrutiny by a committee, and if the committee said for 20 days: "This is terrible; it is awful. This guy will never work; he is incompetent," and the Globe and Mail wrote major front-page stories saying how lousy this person was, I would sense in a political way that, although the Premier obviously had a right to make that choice, at some point he would melt. He might say he would appoint the person Governor General of Afghanistan but that he was not getting the appointment. There is politics in it.

Interjections.

11:10 a.m.

Mr. Chairman: We do not have a Governor General there.

Mr. Warner: Am I allowed to speak now?

Mr. Chairman: No.

Interjections.

Mr. Chairman: All right, Mr. Warner.

Mr. Warner: You are graduating into the tyrannical realm.

I thought one of the things we heard was that a basic distinction in this appointing process was whether or not the appointment carried with it a salary, and that in the case of nonsalaried positions, they automatically got shuffled off for this process of committee scrutinizing and came back. The salaried ones rested with the Lieutenant Governor or whoever the person in power is. We can go through the same process, but I think there has to be that distinction between the salaried and the nonsalaried.

Mr. Treleaven: There is a third category that applies to the majority of cases. They get per diems. They might get \$5,000 a year and free lunch or \$125 or \$65 a day, straight per diems.

Mr. Warner: In our situation, large per diems? I do not think so.

Mr. Treleaven: No, \$60, \$100, \$120 a day.

Mr. Chairman: A couple hundred dollars a days seems to me to be a fairly large per diem. It is more than you get.

Mr. Warner: All right. We might want to put in the three categories that Mr. Treleaven has mentioned.

Mr. Chairman: One thing you will have to do is establish what the criteria will be. Will it be money or a salary? Will it be a per diem or will it depend on the nature of the work? That is where we would have to go through the agencies. For example, different classifications are used for agencies now. You could say that all class 1 agencies will come before committee, classes 2 and 3 will not, or the other way around. You could say everybody who gets an appointment with a salary of more than \$50,000 a year must be investigated by a committee.

Mr. Warner: I agree with that, but one thing that impressed me--and it was from New York state--was the notion of an appointments committee, with people who compile the information and have basic criteria pertaining to the individual boards, agencies or commissions. They know when an appointment is coming up, and what type of individual is needed in order to maintain certain interests and balances.

I would very much like to see us build that into the report. For example, they talked about their commission that looked at ski-lifts in New York state--skiing is a big industry there--and they have a mandate to have the ski industry and skiers represented on their commission.

We may want different kinds of balances and, obviously, we want to be sensitive to minorities. We want to make sure that there is a balance of men and women on committees, as well as specific other requirements. I hope we can build that into the report as a mechanism we are trying to reach.

Mr. Chairman: In the background information we looked at, you may recall that in other jurisdictions they do this in entirely different ways. It is fairly common practice in European parliaments to give each party in the parliament the right to appoint people, much like the American jurisdiction, where they say it has to be this number of Democrats and this number of Republicans and that changes with whoever wins the election.

In Europe it is fairly common to say, even though there are parliaments there with 10 and 15 political parties, each one has a bit hived off and so is allowed to appoint its representative on something. The only difficulty is, as with the Americans, if have boards are sitting in judgement, do you really want to get the political split which has three Republicans outvoting two Democrats, or do you want to say there is a sanitizing process here? They may be appointed by a political party, but when they arrive they are expected not to represent the party.

Mr. McCaffrey: I should reserve my comments until we get down to the report stage, but I want to pick up on something you said and just give my two cents. I tried very hard not to be cynical about this exercise.

Mr. Treleaven: Were you successful?

Mr. McCaffrey: No, I did not make it, not just in the last little while, but during the period we were talking about last summer.

The government's intention to change things around was legitimate and sincere and, to a large extent, it is working. I was as impressed as anybody with that outdoor swearing-in ceremony and the pledge for open government. This is an example of what they would like to see done differently.

But even with the best of intentions, there is some reality in this process that is not going to be changed, and the reality has a hell of a lot to do with history, traditions, patronage, and the way our system works in each of the provinces, notwithstanding the party in power or, if it is in Ottawa, appointments to the Senate.

I think the same point holds there; that is, that the checks and balances we saw in the United States and practised here exist, but in a fundamentally different way, and that is the relationship

between the Premier of the day and the Globe and Mail, with his appointee in the middle.

If there is going to be public outrage over a suggested appointment--I will not even say a candidate--which will bring about a change in that appointment, it is because they screwed up when they made the appointment. It is the political checks and balances that in our system make it work.

I do not think there is a way an assembly committee, an all-party committee, can actually work in this process, other than for officers of the House. I think there is a good chance we can make an excellent argument on officers of the House having to require majority support from an operating committee. Beyond that, we are spinning our wheels.

It was a sincere request of the government of the day for this committee to look at it, and I think it is not going to work. I think that ultimately the bottom line, Elie, is accountability. Premier Peterson is going to name people, as is his right, his responsibility, and he is going to live with the consequences of those appointments.

Mr. Treleaven: You must be wrong, Bruce, Kemo was nodding.

Mr. Martel: I am amazed at my friend's last comments. I do not know what he is talking about because I do not know where the checks and balances have been over the years I have been here. You might name one or two people who got to where they are on ability. The vast majority had some ability, but if it was a choice between ability and party affiliation, party affiliation won out. There were no checks and balances, Bruce, for the nearly 20 years I have been here. For you to suggest that is really stretching credulity, especially for a member who wants change.

I am not sure how it is going to work, but that is not our responsibility. Our responsibility is to put a proposal forward. Any government can discard it--that is, at its peril--but when one is asked to present something, one wants to build on something that is not overly complex, but will meet what we see as three different groups, three different perspectives, the best way to make the system work.

The existing system, if you have been a Tory for 42 years, is just fine. When I go to my own area and look at the health unit--and everybody down there is a Tory--or I look at the Sudbury housing authority, federally the appointees were Liberals and the provincial appointees were all Tories. When I look at every agency, board and commission in my area, it had nothing to do--and I am not saying some of those people were not good people, Bruce, I do not want that misinterpreted, some of them were excellent people--

Mr. McCaffrey: Certainly, that is the issue though.

11:20 a.m.

Mr. Martel: No, it is not because there is more than the existing government's attitude that goes on in a society. If one says that and then one looks at the numbers game and says: "Wait a minute, the government of Ontario in 1975 had the backing of only 32 per cent of the population. What about the other 68 per cent of the ideas that float around out there?" Society is pretty complex for us to put it in one set of terms how we will appoint people.

Take the interesting question on Tuesday, the health units. My God, Sudbury is the only area where the health unit was elected, because I moved the motion at a meeting. The people from the Ministry of Health, who were there representing the ministry of the day, went crazy. It is the only elected one in the province. The rest is by what? You know and I know.

They do not reflect all of the attitudes. They do not even reflect the community of Sudbury, which is largely guys carrying lunch buckets, but the appointees of the government do not reflect that group at all. You get one token appointment from labour on a university board where the city is 75 per cent to 80 per cent lunch pail, though not as much now as it used to be. You get one token at Cambrian College from labour, maybe two.

There has to be a better system because in Sudbury the labour council made its appointments. They said, "Here are the people we want to represent us on the Cambrian board." The board of regents down here said, "To hell with it, we are not putting those people on." There has to be a system where a greater spectrum of people is represented and that has not happened.

We may not get anything. The government may say, "Throw it out," or if it accepts it, the next government may say, "There are no longer any pressures to make that work."

Surely we should put a thing forward which indicates what a majority of people want. It then would go back to the House for the House to ratify. If it does not work, it is not for want of trying. To throw one's up hands and say, "Let the status quo remain outside of the members of the Legislature, the five people in the Legislature," is not very progressive in my books.

Mr. McCaffrey: I respect that and would like to respond briefly. The status quo has been riddled with problems. I think we have addressed a few here in the fact that the list is at least public now giving the timing of these appointments, and that is important.

Over the 20 years you have been here, Elie, you have had the opportunity in committee, this committee, in the Legislature, to publicly criticize specific appointments. Your point about the number of labour reps on various of the university boards is valid. Surely nobody is insensitive to that, and those people in the office of the Premier, notwithstanding the party, should be as sensitive to that as to any group in getting some kind of balance in these appointments.

The accountability is there and I do not see where we fit the appointment of Phil Givens, Vernon Singer and Stephen Lewis.

Mr. Chairman: Let me try to get you back on track. First of all, the status quo has ended. The House has said it will review how appointments are made in the public sector and that is what it will do. I have no illusions that we are going to take the politics out of this. I have never seen a jurisdiction anywhere in the world that ever managed to get the politics out of it.

What we are going to do is probably two or three simple things. There will be an open, identifiable process. That has already started. We will do a little bit to embellish that. How it is done will be reviewed by the committee. How further scrutiny and review might occur will be reviewed by the committee. How the nominations are sought, searched, researched and presented will be reviewed by the committee.

To fulfil the obligation placed on us by the House, we have to look at those things. I think we have enough information to make judgement calls, which will also be very political. I want to reiterate that the status quo has terminated when we go through this. You cannot come at it from the point of view that nothing is going to change. Things have changed. The House has said it wants a different process at work.

At the end, you can throw up your hands and say, "Oh, we just cannot make up our mind," but I am going to be here every day and bring you back on the track to saying whether you want to or not, no matter how uncomfortable you are. We are going to review this and table a report. That is our job.

Mr. Mancini: We have made a lot of progress in a short period of time. I agree with what some of the members have already said about the officers of the assembly and officials reporting to the assembly through the Speaker. I cannot see any other way for these people to be appointed in the future other than through the approval of a majority of the committee or a majority of the House. That is a given, as far as the situation stands right now. Whether it is only five or 10 people, that is a very dramatic change from the way things operated in the past.

The committee feels, and I am part of the majority in this feeling, that there are certain important public positions where we have to have input from all sides of the House. In the past, it has been mentioned that this should be so for possibly the people in charge of Ontario Hydro, the president of the Urban Transportation Development Corp. and others.

Scrutiny by the committee, in the case of a handful of those particularly large and powerful institutions with a tremendous amount of social and economic impact on a province, will probably end up in the hands of a committee for the whole House somehow to deal with.

Getting down to the matter of who is going to sit on a health council or a police commission, things of that nature, I am not sure a committee of the House should sit in judgement of an appointee or a person nominated to the Sudbury police commission. That has to be done in consultation with whomever the local member

is and with all the checks and balances in place in the Premier's office.

Now that the complete list is public, we know what agencies have members whose terms expire and, almost immediately, who the replacements are. All of this is done out in the open.

If appointments are made contrary to the good of the general public or to the generally held political opinions of a particular region, the government party will suffer. They will suffer because they will be seen to be insensitive in their dealings with the general public. I think there are areas where we can make dramatic improvement and a dramatic impact on behalf of the whole assembly and general population.

I do not accept the style used in the United States where a committee of the Congress or of the Senate hauls individuals in front of it and scrutinizes what they have done since the day they were born. Three Democrats have already said to themselves that no way is this person going to be appointed and, as a matter of fact, if they can create enough of a political whirlwind, they are going to embarrass the president, the governor or whomever. That in itself is extreme politics, and I reject it.

I think over a period of time--and it may not all be done this spring--we are going to develop a system which is going to be acceptable, involving (1) the officers of the House, (2) the people of these important crown corporations and agencies which we deem to be of utmost importance and (3) working on the information that has been made available to us. Knowing the lists and who is being nominated in itself is a tremendous change in the whole system.

11:30 a.m.

Once we have that established, it is going to be politically impossible for any government--it does not matter which party is in power--to say it is going to go back to the way it was before May 2, 1985. That will no longer be acceptable, as we move forward with our proposals.

As a committee, we are not sitting here to copy the program and system of another institution. That will not work either. We are here to develop our own and to make sure that our own system of appointments is going to work for Ontario. Once we have the system in place, work with it and get used to it, we will know ourselves how the changes should be made and how many of these other appointments we should add to the list. It is going to be a natural process.

I realize your complete frustration, Mr. Martel. I went over the appointments on the police commissions in my constituency. I agree with you and I am not going to make any comment on their personalities or capabilities. However, surely to God, they did not have to make every single appointee a Conservative.

Mr. Warner: Sure they did.

Mr. Mancini: Sure they did, but they did not have to.

Mr. Warner: It comes of a certain philosophy.

Mr. Mancini: Those days are gone because of the political realities. In the past 11 years, we have had seven years of minority government. I am always asked, "Is that not tough for you, all these years of minority government?" I say, "No, it works just fine." Even if a party is able to get a majority, with the way the political system is in this province, I can hardly foresee any political party or any government party being able to do what was done between 1934 and 1985, or 1943 and 1985.

Mr. Treleaven: That was Freudian.

Mr. Mancini: I think those days are pretty well gone. If Mitch Hepburn had not drunk so much, he would have been Premier for a long time.

While I understand my friend's frustrations, I think he has to realize that tremendous progress has been made and further progress will be made. However, to say that we are going to turn the whole system upside down, pretend there are no politics, scrutinize every appointment to every single agency and have all these people come in--let us be realistic about it. There are going to be political alignments. That is part of politics. Our job is to make an immediate impact that will make certain it will not be changeable in the future, and then to add to the progress we have made.

Mr. Turner: I want to add a little. I am enlightened by some of the things I have heard around the table this morning. I would like to think the community I have the honour to represent has been more progressive over the years. If you take a look at various appointments, you will find that all parties are and have been represented.

There is one problem we must not overlook that I am sure has been a problem with everybody. Mr. Martel has highlighted it. Rather than seeing the appointment base as reflecting a problem here, I think we have to look at some of the people who have been and are on various boards. They tend to become self-perpetuating. In some cases, it tends to become an old boys' club. Recommendations are generated from within. There is no doubt that in a lot of cases there have been and are appointments that are looked upon as token.

What we have to do is have a measure of control here, as you have said, to scrutinize the backgrounds of the various people who have been recommended for various boards and commissions and make sure that the people appointed--there will be several criteria to look at--are not only the best with respect to academic qualifications, but also the best with respect to community qualifications, interests and so on.

I want to caution everybody. I am sure they have run into some appointments--I know I have--where a measure of control has

been exerted by the very body itself, and with all respect, Mr. Martel, they tend to reflect the very problem you are bringing up. Rather than reflecting a government or member attitude, it perhaps reflects an attitude from within that very board itself.

Mr. Warner: Mr. McCaffrey mentioned being cynical, and I do not blame him for being cynical. He comes at it, as he does with every problem we are faced with, with a very honest attitude about it and attempts to deal with the problem. The cynicism, however, is well-founded. We are examining the system for the first time. Am I not right? This is the first time in the history of Ontario that anybody in the Legislature has actually examined the patronage system with the determination to do something about it. We are into a little adventure.

Mr. McCaffrey: There are advertising agencies out there who could write a book on the patronage system, and that is where the real money and real return is. We are not even talking about that. That is an inflammatory word to use about somebody who is going to be chairman of the god-damned science centre for \$5,000 a year.

Mr. Treleaven: And free lunch.

Mr. McCaffrey: I am just saying to be careful when using the word.

Mr. Warner: Okay. We have selected very polite words. What are we calling this?

Mr. Chairman: Appointments in the public sector.

Mr. Warner: Appointments in the public sector. That is a very polite way.

Mr. Chairman: And we are going to continue to be polite.

Mr. Warner: And we are going to continue to be polite. Okay. That is being done.

With respect to appointments in the public sector, it seems to me all of us know what the problem is. When a local library board is being used as a spawning ground for Tory candidates in municipal and provincial elections and so on--

Mr. Turner: Not in Peterborough.

Mr. Warner: --in every community in Ontario, other than Peterborough, that is an abuse of the kind of public system we are looking for. While there will be politics--and I do not think anybody should deny that or say it is a bad thing--I do not think it is a bad thing to have, because every single body we are talking about has some political issue with which to deal.

I suspect someone on a local library board and conscientious about his job would have been concerned over the last few years about the cuts which have occurred to library budgets. That is a

political problem. Those on a local library board are trying to figure out what to do about that and how to handle it. What I hope comes out of it is a mechanism whereby there will be political balance on that library board.

If, for example, all the appointees were of the government stripe, I suspect it would be inhibiting for them to utter their objections to having budgets cut. If, on the other hand, people are appointed on the board on the basis of interest, ability and some political astuteness but there is a political balance, I suspect there will be a good healthy debate on that library board, the result of which may be an expressed concern about budgets or it may not be. But at least they will have a good healthy debate where there is a political balance.

11:40 a.m.

I get a little concerned when I see a local appointment to a board of health of a local developer whose only qualification appears to be that he recognizes a hospital. The appointment was very strictly--and it is not for money--a political appointment for prestige, for the potential that this individual will run for election some day. So they build up his credentials so it looks really nice on the literature. He has been on the board of health, the library board, this board and that board. That builds up his credentials when he goes door to door.

Those are entirely wrong reasons for having individuals serve on public boards. I am hoping we can come up with some kind of mechanism for that. Mr. Chairman, I am sorry, but I am the only member you encouraged. Kemo mentioned a few things about the American system. Perhaps he forgot some of the things we learned from New York state and the state of California in particular. Unless I am wrong, while they had a process for looking at every nomination, they did not bring every individual before a committee of the state Legislature.

Mr. Chairman: Nobody does that.

Mr. Warner: Right, but they then have a very selective process. First, they set out criteria. Second, they make an effort for balance on their appointments--whether it is male or female, whether it is ethnic minorities or whether it is by background credentials. In some instances, they have a check with respect to criminal records.

The one concern I had about what I saw of the American system was the excessive checking into an individual's personal life and economic background. I concur with the idea of at least doing a police check. I am not sure we want criminals serving on public boards, although that may be part of rehabilitation.

Other than that, I am a bit nervous about going into a full-scale check of everyone's background. I look forward to this because I think we will have a process in place when we are finished. It will be open and we will get people who are qualified to serve, whose qualifications are not primarily that they are supporters of the government.

If we end up, as I hope we do, with a good political balance on each of these boards, then we will get some darn good healthy discussions which should be of assistance to the members here. It could give us a bigger perspective on the issues, whether it is health, libraries or whatever.

Mr. Turner: That is why Peterborough is such a terrific community.

Mr. Chairman: I am glad to hear that most of you are against sin.

Mr. Martel: I want to make one small point. The groups I talked about and the appointments made influenced the lives of people much more at that level than at the level of some high-falutin' post down here in Toronto.

I have to worry about how the appointments reflect my community and the people in it. If it is a housing authority, we do not bother to bring someone in from, let us say, children's services to serve on that board where there are kids involved. We know the problems that go on in public housing. Yet no one has any empathy at all for the people living in that public housing. That is why I want to get down to that level.

While it is important in a political sense to get somebody to run Ontario Hydro and be accountable, the everyday lives of people in our communities are affected more by the local appointments and how those boards reflect the community, than by the appointments at a higher level. That is what concerns me. We have to get at that problem.

Mr. Morin: Would anything prevent us from making a recommendation to the effect that the municipality should have its own body to evaluate the qualifications of the individuals applying for these positions?

Mr. Turner: Most do, do they not?

Mr. Morin: Do they?

Mr. Turner: Yes.

Mr. McCaffrey: I would like to make a couple of observations, partly in response to Mr. Warner and a couple of other things that came up.

I can understand the frustration, and you and I and David and others have reflected that. Many of the people in our own caucus could too. I do not think there is one of us who in all honesty has not got some specific thing in mind--whether it is the Sudbury health board or whatever--that has been a real irritant over the years.

Our approach, as per the government's instructions to this committee, is based on two false assumptions, I think. One is that, as in the United States, there is a distinct difference historically between the legislative and executive branches. Those

two different bodies provide themselves a check and a balance. This is a fundamental difference between the systems.

Second, and I think even more important, it assumes there is in this new approach an ideological difference in this jurisdiction that makes appointments important in agencies that deal with the public.

One does not have to be cynical, but only realistic, to know that whether you are taking a Jim Breithaupt or a Phil Givens and so forth, you just cannot find any deep ideological differences in this great province on the matters that affect people at these places we are talking about. In the Ontario Municipal Board, they would be negligible, if they existed at all. They would be nonexistent in the Ontario Science Centre and those kinds of places.

Remember in Washington that all of us commented on it. There were fundamental ideological reasons for Reagan's people being appointed to the various boards, agencies and commissions. They were real and measurable. People always talked about it; it was very real.

In this province, this government and the preceding governments cannot claim to have serviced that ideological difference. The rubber hits the road when we get down to point 8 on page 3, under Adverse Reports by Committee, because of those two important differences in my case "...with some appointments an adverse report by a committee would be understood to require the withdrawal of the nomination."

When the rubber hits the road, I really do not believe we will change this system. When the rubber hits the road, the government of the day, responsible to the majority in the assembly, will say: "Joe Smith is our appointee, notwithstanding your criticism. We are prepared to take that into the assembly and into the public forum."

I believe the government has the right and the responsibility, but most important, the accountability, to stand behind every one of its appointments.

Mr. Chairman: We have had a good kick around the major issues. We are now in reasonable shape to proceed with public hearings and to begin to write the report. Over the next little while, I would like you to consider how quickly you want to move on this. I am somewhat anxious that we at least table an interim report before the House adjourns this fall.

We have asked the government not to proceed with large-scale appointments. By and large, it has agreed to that and has been somewhat modest in simply making sure the ship of state is allowed to function. However, I do not think it is fair to the government of the day or to ourselves to let this go on for a lengthy period.

My aim is to table an interim report by the end of this session, and that means we will proceed through the public hearings stage. We know the criteria. It is a matter of making up

our minds as to how far we want to go and what those criteria should be. We will start that next week.

Mr. Warner: What are we doing next Thursday?

TELEVISION IN LEGISLATURE

Mr. Chairman: That brings me to the next item. Next Thursday we will have a report from the consultants on the trial period for televising the proceedings. I would like to make that an order of the day, so we could do that for an hour or so. If some people are in a position to appear before the committee and comment on appointments in the public sector, we will also be able to have some of that next Thursday.

Mr. Warner: With respect, I appreciate having that back--I do not know whether we have time to deal with it today--but I am very disturbed with what I hear about the progress on the television.

Mr. Chairman: You will have a chance to review that next week.

Mr. Warner: A whole week goes by. I understand that we are getting stonewalled by people who are not members of the assembly, but who have the power to stonewall the advent. They are talking about the television not coming in until the fall.

Mr. Morin: Who are these people?

Mr. Chairman: You will have a chance next week.

Mr. Warner: I am very upset about it.

Mr. Martel: We are going to look at a couple of boards, agencies and commissions some time in the interim.

Mr. Chairman: That is the next item on the agenda.

Mr. Martel: I would like to speak to that with your permission.

11:50 a.m.

ORGANIZATION

Mr. Chairman: Let me review my problem. We may get a major piece of legislation, the freedom of information bill, put to the committee. We had tentatively settled on reviewing four agencies in the interim between sessions. It is now becoming apparent that we have a time problem. At the most, I would envisage some three to four weeks of sittings. It is obvious that if we are given a major piece of legislation, we will not be able to review agencies.

The best I can do now is to try to get from you some indication of when you would like to sit, given that the House might adjourn some time around mid-February and resume around

April 1. It would be helpful to me if you would give me some preferences as to time frame.

Mr. Warner is going to step down for a minute so that Mr. Martel can speak. I do not want you to pick on the largest, ugliest member of the Legislature.

Mr. Martel: I have a bit of a problem in that I am organizing a task force and meeting halls and so on have already been established for some 12 communities. I take to the road with a road show on occupational health on March 17. I can postpone it one week if pushed to the wall. To accommodate the committee, I can put it back.

I deliberately chose that. As you know, one starts planning these things based on when the House usually rises and on when the House usually sits. It comes back right after the school break as a rule, so I slated all this for late March and early April. I will be travelling for some five weeks. If we are going to sit, I hope that because of the bind I am in, with notices having been sent out, that the committee would consider that. If it is legislation, I suspect the government will want it to sit immediately after the House adjourns.

If we do agencies, boards and commissions and not legislation, I will still ask the committee to consider doing the work immediately after the House recesses or adjourns. I know the members will want time off, but they might want better weather for it such as the early part of April. I am not sure many people go to Florida in mid-March. I have that problem and I have no way of getting out of it, because we have been working on it for about two and a half months.

Mr. Warner: Is that March 17?

Mr. Martel: I can even postpone the March 17 thing for one week. I left one vacant week, the week of April 1.

Mr. Chairman: I suggest you do that.

Mr. Warner: What period of time are you talking about?

Mr. Martel: As it now stands, I am looking at March 17 in Elliot Lake, March 19 in Sudbury, March 21 in Thunder Bay, March 24 in Hamilton, March 26 in St. Catharines, and then into April. I have the one week when I can move my agenda.

Mr. Chairman: To assist you, I suggest that you move that week and clear as much of the month of March as you can. The reason I am saying that is the best information I have is there is a general intention to get out of here by about mid-February. These good intentions sometimes get translated into an extra day or an extra week.

If we are scheduling agencies, it would be awkward to say maybe the third week or maybe the fourth week. We would have a little difficulty with that. It appears to me that we are looking at about three of the four weeks in the month of March and maybe

the last week in February. That is the clearest timetable I can give you.

Mr. Martel: I guess that is what I am requesting. If we are going to sit, can we do it at the beginning? I am so tied into this thing--

Mr. Chairman: I think the best advice for you is to adjust your schedule, if you can, to move that one week out of March. For the rest of the members, the best I can do is give you some notice that whatever we are doing, it will probably occupy three of the four weeks in March. We will determine as it gets closer exactly what the schedule will be. It looks less and less likely that we will be reviewing agencies.

Mr. Warner: I am prepared to start right after the House is finished.

Mr. Chairman: We do not know when that will be.

Mr. Warner: If we are doing the legislation first, though, then in a sense it does not matter. If we are doing freedom of information, we can start--

Mr. Chairman: That may well be the first week of March.

Mr. Warner: I see what you mean. I am prepared to do that. What about the other proposal we had?

Mr. Chairman: When we have more information on that, we will give that to you too.

Mr. Martel: If I move that one week, it also clears that trip because I would move the week of March 27 to March 21 into March 31 to April 4. I would simply move my first week into the third week. I had a break to come back to Queen's Park because I thought the House was going to be sitting.

Mr. Chairman: We have one other piece of business. John Eichmanis has here this morning someone who will be replacing John, if John needs to be replaced on the committee.

Mr. Eichmanis: I hope it is only when I am sick.

Mr. Chairman: John, would you like to introduce him?

Mr. Eichmanis: This is Patrick Malcolmson from the Legislative Research Service. Patrick has an MA in political science and has an interest in institutions and decision-making processes in the government. If I am unavailable because of sickness or whatever, Patrick will be a backup for me, or if the committee is inundated with work and I need help, Patrick will be available to assist me in those areas. There he is.

Mr. Turner: Welcome aboard.

Mr. Chairman: The committee stands adjourned until next Thursday at 10 a.m.

The committee adjourned at 11:57 a.m.

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Government
Publications

STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES, BOARDS
AND COMMISSIONS

APPOINTMENTS IN PUBLIC SECTOR
SOCIAL ASSISTANCE REVIEW BOARD STUDY GROUP
ZVOOK CORP.
ONTARIO PUBLIC SERVICE EMPLOYEES UNION
TELEVISION IN LEGISLATURE

THURSDAY, JANUARY 23, 1986



STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES,
BOARDS AND COMMISSIONS

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)
VICE-CHAIRMAN: Mancini, R. (Essex South L)
Bossy, M. L. (Chatham-Kent L)
Martel, E. W. (Sudbury East NDP)
McCaffrey, R. B. (Armourdale PC)
Morin, G. E., (Carleton East L)
Newman, B. (Windsor-Walkerville L)
Sterling, N. W. (Carleton-Grenville PC)
Treleaven, R. L., (Oxford PC)
Turner, J. M. (Peterborough PC)
Warner, D. W. (Scarborough-Ellesmere NDP)

Also taking part:
Johnston, R. F. (Scarborough West NDP)

Clerk: Forsyth, S.
Assistant Clerk: Decker, T.

Staff:
Eichmanis, J., Research Officer, Legislative Research Service

From the Office of the Assembly:
Mitchinson, T., Director, Information Services Branch

Witnesses:

From the Social Assistance Review Board Study Group:
McKean, J., Staff Lawyer, Flemingdom Community Legal Services
Vander Plaats, N., Chairperson; Community Worker, Scarborough
Legal Services

Nitefor, M., President, ZVOOK Corp.

Smith, G., Chief Steward, Local 543, Ontario Public Service
Employees Union

Applin, M., Consultant, Coopers Lybrand Consulting Group

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND
AGENCIES, BOARDS AND COMMISSIONS

Thursday, January 23, 1986

The committee met at 10:04 a.m. in room 228.

GOVERNMENT APPOINTMENTS
(continued)

Mr. Chairman: I see a quorum. This morning we have some material on the appointments process. Members will have on their desks in their offices, if not with them, copies of all the submissions that have been received and a synopsis of the paper flow, this one-ton document over here, which provides a summary of how other jurisdictions screen applicants and the forms they fill out. The process is described there.

First this morning we have some people who sent a brief to us from Scarborough Community Legal Services. They are making some comments on the appointments to the Social Assistance Review Board. We have Nancy Vander Plaats and John McKean. Is that right?

We want to keep this as informal as we can. Basically, we are looking for people's comments, ideas or suggestions about how appointments are made and whether it is appropriate and how it might changed somewhat.

Just to review it for you, the committee has looked at how other jurisdictions do it, most notably the federal House and American state legislatures. We have amassed a tremendous volume of paper here on the processes in other jurisdictions. The committee is charged with the responsibility of writing a report and making recommendations that would alter how appointments are made in the public sector in Ontario. We are very anxious to get comments from people who are observers of the current system and to hear any suggestions you might have on how we might make some changes to it.

We would now like to give you a little chance to talk to the committee for a while and then give the committee an opportunity to respond to you and to ask some further questions. Either one of you go right ahead.

SOCIAL ASSISTANCE REVIEW BOARD STUDY GROUP

Ms. Vander Plaats: I am Nancy Vander Plaats. I work at Scarborough Community Legal Services as a community legal worker, but I am here as well as chairperson of a group called the Social Assistance Review Board study group, which is composed of Metro Toronto and area legal clinics who represent appellants before the Social Assistance Review Board.

We want to talk to you today about our ideas on appointments to that particular board. That is our concern. You may find that

some of our ideas apply or could be applied as well to other provincial boards, agencies and tribunals. We will tell you a little bit about why we think the process of appointments needs to be changed.

The Social Assistance Review Board is the tribunal set up to hear appeals under the General Welfare Assistance Act, the Family Benefits Act and the Vocational Rehabilitation Services Act. These are appeals when an individual has been refused assistance or has been cut off or suspended from assistance or when the amount of his cheque has been reduced.

Thus, this board deals with pretty important issues. It deals with the essential means of livelihood of people who have no other income, who do not have jobs; people who may be disabled; single parents who are already at the bottom of our safety net. If they are cut off or refused assistance there, they have nowhere else to go except to the soup kitchens, the shelters or the Scott Mission.

It is a very important board to the poor and the voiceless in our province. The question is whether that board, whose members are all appointed by the government--traditionally, of course, by the party in power--demonstrates that it is an independent and impartial board. It has to hear the decisions of individuals who are in the position of adversary to the government. Either the municipal welfare department or the provincial family benefits program has cut them off. The question of independence is important there. The board is appointed by the government, and yet it is making decisions on other government departments.

In our written submission to you we quoted from a few cases that have been appealed from the Social Assistance Review Board to the Supreme Court of Ontario, to Divisional Court. In the three cases I quoted, after the justices of the Supreme Court commented and made their decisions on the individual facts and legal issues of those cases, they were inspired or decided to make some general observations about the practices of the review board.

10:10 a.m.

As Mr. Justice Henry said in the case of Dowlutt and the Commissioner of Social Services:

"I cannot leave this case without some general observations. I do not wish to be unduly critical of the board, which is composed of lay members, but it is incumbent upon them to learn the rules prescribed by law. They must impartially weigh the evidence before them. Frequently the parties will not be represented by counsel, but this does not alter the rule, which is to listen fairly to both sides and to decide according to the evidence that they believe and accept. While it is obvious that in this class of case the board must be alert to detect abuses of the welfare assistance program, it is not their function to seek ways to uphold the decision of the commissioner simply because his staff have discovered some evidence tending to show that the recipient is ineligible to receive the assistance. It is their duty to protect the public treasury and to prevent unauthorized

payments; but at the same time they must be aware that an eligible recipient is entitled to receive welfare assistance as the Legislature has declared in section 7 of the act."

Another case commented on by the Divisional Court is Burton and the Minister of Community and Social Services:

"The board has made reviewable errors by reciting but otherwise apparently disregarding the evidence of the applicant and of witnesses for the applicant.... Along with the excessive concern with sexual relations went a general tendency in the reasons of the board for an overstatement of the evidence, making it appear more supportive of the board's conclusion than the evidence itself, as disclosed by the director's written submission and, particularly by the transcript, actually was."

I have another brief comment from the decision in Pitts and Director of the Family Benefits Branch: "I am moved to make these observations because of the disturbing frequency with which claims appear to be rejected on nothing more than 'mere suspicion' and an undue scepticism."

These cases actually are many pages long and go on to describe for the benefit of the review board some of the legal principles it should follow in order to act fairly and impartially as judges. It is noteworthy that judges of the Supreme Court of Ontario found it necessary to explain in great detail to the board that they must be fair and impartial.

In all three of these cases the appellants who were before the board were represented by counsel. When they lost their cases at the review board, they appealed to the Divisional Court and won their cases at that level. I could add that the latter two, Burton and Pitts, are under appeal to the Court of Appeal. They are not finally settled yet.

The vast majority of appellants before the Social Assistance Review Board are not represented by counsel. They go in by themselves, probably have never seen a copy of the General Welfare Assistance Act or of the Family Benefits Act and are not quite sure what the legal issue is. They do not know the onus is on them to prove their case. They just know they have been cut off from assistance and need the money.

I will give an example that has been brought to the attention of the SARB study group where an appellant was unrepresented. This is a hearing that happened on December 12, 1985, in the region of Halton. A hearing was in process, but the doors to the hearing room were wide open. Therefore, anyone out in the waiting room could hear what happened. In fact, someone did overhear it. By the way, according to the Family Benefits Act, the hearings of the board are supposed to be held in private.

This appellant was unrepresented. It was a male, and the issue was whether he was making reasonable efforts to seek employment, whether he was really looking for work or not. The board members obviously failed to understand the legal issue here--whether he was making reasonable efforts to look for

work--because in their questioning they asked the field worker for the municipality of Halton department of welfare, who was there, "What is your policy on looking for work?" The field worker said, "Recipients have to make three personal contacts a day." The board member then turned to the appellant and said: "You should do what you are told. If you do what your worker tells you, assistance cannot be denied."

The board member did not refer to the actual General Welfare Assistance Act to look at the question of whether he was making reasonable efforts and decide as a board what reasonable efforts are. He told the appellant: "We have to enforce whatever the local welfare office says is its policy. In fact, you are quite lucky here in Halton. I was in Timmins last week, and they have a more stringent policy for a job search. Therefore, we have to enforce their policy there and Halton's policy here."

At that point they gave the appellant an opportunity to present his case. He stated he had made many phone calls, sent letters to prospective employers and had also made personal visits. He advised the board that normally he would call companies and ask whether they had a job opening or whether there was any possibility of taking his application. He would then go in person if they were taking applications. The board did not question this appellant's credibility or give any indication it did not believe him. He apparently had a file of letters with him to document his job search efforts.

After hearing the appellant, the board then asked the field worker for some copies of certain documents she had in her file. They instructed her to go to another room and make photocopies. At that point the appellant said, "Would you like copies of the documents I brought?" The board said: "That is not necessary. We have already seen them." If this issue were ever appealed, there would be nothing on file, no written documents for the appellant's evidence.

After the field worker for the municipality returned with the copies of her documents, the board then said to the appellant: "Okay, the hearing is finished. You will hear our decision in about four to six weeks. Compliments of the season to you." This was just before Christmas.

Of course, the hearing was over and the appellant left. The two members of the board then continued to discuss the case with the local welfare field worker. One member said to the worker, "We can tell you right now that we are going to affirm your decision." The other member said, "We are really not supposed to tell you that now, but yes, that is what we are going to do."

That is probably one of the more blatant examples we have heard of raising the question of how independent, how impartial this board is. How qualified are these board members if they do not refer to the law, to the acts, but ask the field worker: "What is your policy? We will enforce whatever you decide your policy is."

10:20 a.m.

I should get to our recommendations. How can we make sure there is not only an impartial, independent, neutral board but also that such a board has the appearance of independence which is very important for justice, not only to be done but to be seen to be done.

We feel that there should be some public input into the process of making appointments. We would like to recommend that an advisory committee be set up with representation of the Ministry of Community and Social Services, the Attorney General, legal clinics who represent appellants, the private bar, and social service or community organizations who have experience of dealing with the problems of social assistance recipients.

Such an advisory committee could help to draw up a job description and a list of qualifications for board members and could review names suggested for appointment to this particular board. I believe a process such as this could very well fit into legislative scrutiny of appointments. If a legislative committee is looking at names, presumably they would want to seek input from the public, or from people who have knowledge and experience in the field of whatever board or agency or commission you are dealing with.

By setting up such an advisory committee, the Legislature and the Office of the Premier could get such input into the appointment process.

Finally, we feel it is important to undertake an affirmative action program to encourage people who are most directly affected, people who live the lives of social assistance recipients, they should also be appointed to the board.

The justices of the Supreme Court in the decisions I quoted demonstrated an understanding of what life is like for social assistance recipients, struggling on very meagre incomes, often a lack of a sense of power or having any voice at all in society. However, we have seen little demonstration of that kind of an understanding from members of this board.

In order to have members on the board who have the empathy and understanding of life on public assistance, members should be appointed who have been recipients, who have experienced that life as well as who have been perhaps involved in community organizations, in addition to looking for legal and other skills and qualifications.

Do you have anything to add, John?

Mr. McKean: Yes. My name is John McKean. I am a lawyer at Flemingdon Community Legal Services which is a legal clinic in Toronto.

I have appeared before a number of administrative tribunals, courts, including the Divisional Court on appeals from the Social Assistance Review Board, and I would like to add some thoughts

generally from the perspective of a lawyer who has appeared before a number of tribunals including this one, and to what is necessary to make a good appointment.

It seems to me that my starting premise is the belief that all tribunals are not equal, that there are different types of tribunals and they make different types of decisions and they have different types of requirements. There are lots of tribunals where the policy input is a much greater amount, and it may be much more legitimate that the party in power have more control over the type of people who are on those tribunals.

As just one example, this tribunal is somewhat unique in the sense that it deals almost exclusively in disputes between the most powerless members of society and government itself. Half the cases, in fact, are disputes between the Ministry of Community and Social Services and welfare or family benefits recipients. Given that this tribunal reports directly to the Minister of Community and Social Services (Mr. Sweeney), there is obviously an immediate appearance problem.

As a lawyer, I have always been trained that one should be concerned with, not only the reality of injustice, but the appearance of injustice. If someone has appeared before the Social Assistance Review Board, there is a lot of concern about reality. Even if you were going to appoint ideal candidates from whatever party you happened to appoint, one has to be concerned about the appearance of injustice when you have such a close link between the appointing agency and the tribunal and one of the parties to the proceedings.

What this board is essentially doing, unlike a lot of tribunals, is applying factual and legal questions to decide the rights of an individual citizen. It is very similar to what judges do in other types of proceedings, except that these issues for these people are decided not worthy to be given to judges. Instead, we give them to administrative tribunals. That, in itself, is an interesting question when you consider that these are poor people. It tends to be poor people's questions that tend to be referred that way.

However, there are some theoretical arguments that the matters could be dealt with in a better way. What are or should be the qualifications, apart from the general area of honesty and integrity that are the same for all tribunals. It seems that there are two types of qualifications that are special to the tribunal.

The first one is special knowledge of the subject of the board's decisions. For instance, it would be helpful if members of the Social Assistance Review Board had knowledge of the social assistance system and had some knowledge of the lifestyle of the people who appear before the board. Theoretically, they could even make better decisions than Supreme Court judges, because they would have a better understanding and a better ability to appreciate what is reasonable and unreasonable in the context in which the people are living. However, as someone who has appeared before the Social Assistance Review Board and someone who has appeared before the Divisional Court, I have never found that to be the case with respect to this tribunal.

I will just draw a couple of examples. One of the problems with people who are poor is that a lot of them are very transient. The official records of their addresses is often not very good evidence of where they are actually living at any point. They also do not tend to be very responsible in switching their address, which is another problem. Divisional Court judges have been very understanding of that. It was pointed out on several occasions that that evidence is not very good evidence. The Social Assistance Review Board still does not quite understand that, because something is on an official record, it does not mean that it is so and that you have to go beyond that.

Similarly, anyone who has any appreciation of this, recognizes the powerlessness of single mothers in dealing with a lot of men in their lives. That comes up in a lot of issues that are before this Legislature in terms of all sorts of things. Yet, you still have many instances where board members say, "Why are you allowing him to do this?" Anybody who has some appreciation for the lifestyle should understand that the first question is whether the woman has any control over what the man is doing. That is a very real question in a lot of these instances.

10:30 a.m.

The other area that is necessary is legal or other technical expertise. We are talking about people who are performing the same functions as judges. The eight members of the board have almost no qualifications in that area.

Going back to my original point, it is important that we remember that it is not enough simply to appoint competent people. That would be a substantial improvement. We also have to have a process that, in itself, ensures some independence.

That leads to the recommendations. I would suggest that it is especially important that this committee address the questions of the different processes that may be required for this type of tribunal, where the government is so much one of the parties.

An example of a similar type of process is that there is now, in this country, a process where the bar association has input in terms of screening the appropriateness of candidates. They recognize the independence of these people who decide rights, often between citizens and government, and there should be some method of screening.

This is even more important in the case of a board like the Social Assistance Review Board and other types of boards such as the Canada Employment and Immigration Commission. You need to build in some process where labour members have one candidate and employer members have a candidate. It must be built into the process as well so that there is some insurance that there is representation for the appellants as well as the government. That is something that this committee needs to look at very closely.

Mr. R. F. Johnston: Just a comment. I am not a committee member, but I know the committee and support what the SARB study group is saying, and I have made a number of presentations to the

Social Assistance Review Board, as some of you have. As critic for social services, it is something I have done perhaps more than most members.

I have also been involved in trying to get the ministry to consider ways of improving the whole question of how SARB operates as a tribunal. I want to talk about the qualifications of the group that is before you, because they have been presented as one legal clinic and part of an overall study group.

For years now, this group has been making presentations through the estimates process around the procedures that are happening at the board--not just around the appointments--but the way it operates and the feeling of the lack of fairness in the way this tribunal operates. They are probably the most credible group that could come before you to talk about reform of this particular group. I just want to emphasize the seriousness of it.

The SARB also does not just deal with the questions of social assistance but has, in the past, and to a lesser extent now because of Bill 82 coming into effect, dealt with the whole question of learning disability. When you talk about the conflict between a board that is appointed with ministry involvement and is there making decisions for the ministry against somebody else, you should also think about what has happened in the case of the learning disabilities side of all of this.

As a board, they have actually decided that they could not rule on matters or hear witnesses who say they need vocational rehabilitation, because of a regulation that was passed by the government which says that school boards have a veto in the process. They would not allow themselves to be a tribunal. They would not hear both sides and make a determination as to whether one side or the other was right. They said that because the school board would not admit--even in absence of evidence--or send a letter saying it could not provide. They would then not hear from the other person's point of view on this matter. That is another indication of this conflict that they are in in terms of following regulations or being a real independent tribunal.

I support what the group is saying. This committee should take a very special look at this particular board in terms of how it is presented. The rational recommendations that have been put before you should be very helpful to you. It may seem like the smaller of the three, but the one that says that there needs to be a job description for these people is really a vital one in terms of getting fair representation. It may seem a little more revolutionary, but the idea of actually having a recipient or past recipients on this board is part of this decision making. It would be a wonderful progressive move if we could move to that in Ontario.

I just wanted to put my own feelings in on that.

Mr. Martel: On the latter point, I want to support Mr. Johnston. In our caucus, some of my colleagues have dealt with a number of women who were on welfare or social assistance out in the field. They have experienced it all, and they have--if I can

use that awful term--pulled themselves up by the bootstraps. However, I tell you when they go in there and start to work for you, the type of job they do representing people who have not fitted in the niches is quite dramatic. When people say, "Somebody who has been on welfare does not have the ability to do that," that is not true. Given half a chance, I have always suggested the Ministry of Community and Social Services should be the most interesting ministry of government because it is the ministry you could do most with for people who are deprived. Yet we have not succeeded in that.

Like Richard, I have been before the board a lot of times. On occasion, I still have to write them for a decision, because they do not even bother to send me a decision after I have appeared on behalf of a constituent. I have to phone to find out what the decision was so I would know what is happening to my constituent. You talk about total lack of concern. They do not even have to tell me whether I won the particular appeal I made on their behalf. If you have a board that thinks in that fashion, that is so callous it will not even give you the decision after you have represented them, or they will give you a notice, a very quick notice--sometimes I do not even know that. I have asked for an appeal, they have set up a date for a constituent in their home town and at 10 a.m. I realize I am supposed to be representing someone 75 miles away. It is so totally lacking in human concern.

There is the odd exception on the board. You have some--I am not going just to brand them all, but I want to tell you even the makeup--I was here when the first board came in and tried to get native people on that board. I do not think to this day there is a native person. Back in 1971, 1972, 1973, I was saying we had to have a native person, because who best to understand what is happening in the native community--the first citizens of Canada--than someone who has experienced it? My God, heaven knows the number of problems native people have, and yet they have never put a qualified first citizen on the board. It was difficult at the beginning to get a francophone on the board, or in another community maybe someone who is Portuguese or Italian.

It is an insensitive board and I just want to make one final point. You cannot have the appointments made by the ministry or through the ministry to look at the ministry's own legislation and to reverse decisions. It is just unfair. We have to have people who know the field, who have empathy, and who are not going to worry about whether they are supporting a decision made by the local individual.

I come from an area--I was just telling Richard the first I ever fought was similar to one you have mentioned. A woman with a two-year-old child. Her husband was incarcerated and they would not provide fuel for her in November in northern Ontario because someone with a motorcycle used to be at this woman's home two or three times a week. So they cut the fuel supply off.

For 15 years I fought and recommended in the House that the administrator be fired. I did not succeed, by the way--he retired on his own--even though he did such things as not provide dental care for kiddies because he thought a good way to make the father

go back to work was if he did not provide dental care. Can you imagine? That still goes on in some parts of the province.

Sometimes I disagree with the father. Maybe he is a lazy lug. But I have to look at the wife and the children in those situations, and you have to have people who are sensitive to it. I want to say that even some of our administrators are not. The only way we can ensure there is justice is to strengthen the review process with people who are qualified.

Mr. Chairman: I apologize for this cross-examination under way here. Somebody may break out with a question sooner or later. Mr. Turner, do you want to try?

Mr. Turner: No, I do not--

Mr. Chairman: We are consistent.

10:40 a.m.

Mr. Turner: I just want to identify with what has been said. Quite frankly, I think we are all aware of the problems. We do not need, and I do not say this disrespectfully at all, a recitation of the frustrations that go with appearing before this tribunal and certainly dealing with some of the people involved. I would think that in my constituency this particular type of case probably takes up or makes up a major part of the work I do. The recitations that my friend the member for Sudbury East has just made, I can go into them as well but I will not.

I have always felt, rightly or wrongly, that even the professionals involved--and maybe this is unfair to say--perhaps even in the ministry, have been too prone to go by the literal interpretation of whatever is front of them and have not had any regard or very little regard for the human factor, as I refer to it, and the problems with which these people are faced. I can tell you they are very real problems, and if any one of us were faced with them we would not stand it for five minutes.

I just want to congratulate you and thank him very much for highlighting what a lot of us already know and would support very strongly.

Mr. Chaimran: I shall try again. Mr. Warner, I know I can count on you to ask a short, sharp question.

Mr. Warner: I actually have a question--one comment and one question if that is permitted.

I think all of the committee realize that the Social Assistance Review Board does not function properly. I would say from my experience, and it is probably the experience of other members, the review board does not use the basic rules of Canadian justice of the judicial system. One has a far more fair opportunity in front of the courts than in front of the Social Assistance Review Board. Basic rules of justice are not adhered to. Like other members, I have personally gone through that kind of experience.

Mr. McKean, picking up on something you mentioned with respect to appointments, are you suggesting that in whatever format we come up with we enshrine a process by which we would ensure that there were, shall we say opposing views assured of being represented on the board? In other words, as you used the example of the Canada Employment and Immigration Commission where there is a labour appointee and an employer appointee, are you suggesting that we attempt to take the same process as it applies to the Social Assistance Review Board, and if you feel you could comment beyond that, on other tribunals?

Mr. McKean: I think there are two aspects, the input into the appointment process and the actual people who are on the board. I think it would very useful if we could implement a system whereby there was always somebody on the board who represented--"represented" is probably not the right word--in some way the interests of the appellant, because there is always going to be someone there who represents the interests of the government, which is the other party.

I think the importance of this is dealing with tribunals where the conflict is between the government and the other party. I think that is something that could be implemented in other types of similar tribunals. Also, the importance of diverse input into the actual appointments as opposed to who is appointed is what I am talking about in terms of the screening process. I think both are important.

If you analyse it, it is more difficult to structure it in the way the unemployment insurance commission is doing, because although you might be able to do it like the unemployment insurance commission, there is more of a direct connection between the tribunal and the ministry in this case. Almost anybody who is there is a representative of the ministry, and we need to get somebody on there who represents somebody else.

I think it is important to look at both those aspects, that there be some enshrinement of a process whereby appointments have to go through another screening process as well as just the government. There needs to be a nongovernmental input in the actual process. I think it would also be very useful to have nongovernmental representation on the board. It would actually be nice if you had 50 per cent of the people so it was actually fair.

As an example of another system, at the Canada pension plan the ultimate appeal process is an arbitration system where the government appoints one person, the appellant appoints one person and the two of them appoint somebody else. It is hard to do that when you are talking about the volume you are dealing with here, but certainly I think some process whereby, after you have had the hearing and they are making the decision, there is always somebody there to represent the appellant. That would be a very useful step and it could apply to other types of similar tribunals.

Mr. Chairman: We are a little behind schedule. I thank you for appearing before the committee this morning and we appreciate your thoughts.

The next witness before the committee is Michael Nitefor. This is exhibit VV. Just for committee members, these are the witnesses who will appear this morning. This bound book is a copy of all the submissions the committee has received. There is a little bit of a problem in that the pages are not numbered, but this is exhibit 48. It is on page VV.

ZVOOK CORP.

Mr. Nitefor: There are two pages to my letter there, I hope.

Mr. Chairman: It is near the end of the book. Okay, it is the same format. We are going to give you the opportunity to say whatever you want to say and then there is always the chance that somebody might actually ask a question.

Mr. Nitefor: Okay, I will make a statement.

My name is Michael Nitefor. I am president and founder of Zvook Corp., an Ontario-based high-technology company. Over the past several years, with the assistance of the National Research Council, we have developed a new generation of a learning aid, which we believe can have very important implications for training and education delivery.

My purpose in addressing the committee is to highlight two specific points referred to in my letter to Mr. Breaugh, dated December 3--I am glad to see that you all have copies of that--and to ask the committee to consider my comments and recommendations. I shall be pleased to answer any of your questions at the end of my brief oral presentation.

My comments, observations and recommendations for the committee's consideration are particularly relevant right now in view of the recent release of the committee's report on the premature disclosure of the interim report of the select committee on economic affairs.

Part of my comments will deal with document leaks in a situation in which my company and I were recently involved. The leak I would like to refer to deals with the experience of my company, Zvook Corp., in its dealings with the Commission on the Financing of Primary and Secondary Education.

I have taken this opportunity to appear before you to indicate that document leaks and other irresponsible, arbitrary measures on the part of government employees can and have caused damage to my company and to the people of this province.

I trust that my remarks will be of assistance to the committee in formulating its report to the House. I further trust that the report will precipitate changes that in the future such document leaks and other arbitrary actions of personnel working on any appointed commission can be totally eliminated or eliminated to at least some controllable extent.

I should like now to refer to the two points mentioned in my letter to Mr. Breaugh. The first issue is in regard to the

submission of my company's report to the Commission on the Financing of Primary and Secondary Education, which was delivered on April 24, 1985. I will very briefly go through the points mentioned in the latter.

10:50 a.m.

Specifically, "Zvook found the behaviour of the executive director, Mr. L. E. Maki, unco-operative in not responding to correspondence and not supplying commission guidelines on behaviour as requested." All these points really hit very much at the heart of how people are appointed and what their behaviour is in dealing with parties that make submissions to such commissions.

The chairman, Mr. Macdonald, was very unco-operative in not responding to our request to clarify an incident in which Zvook's written submission was provided to the Ministry of Education contrary to commission guidelines. The commissioners took no action in clarifying the said leak, the leak of the document. Senior personnel at the Ministry of Education did not provide an adequate explanation of why Zvook Corp.'s written submission was in their possession.

In regard to this point, the conclusions and recommendations are as follows:

"Zvook found the lack of an arm's-length relationship between the commission and the Ministry of Education highly unacceptable. The manner in which both the ministry and the commission covered up the facts of the document leak incident shows poor administration, cronyism and a disregard for the legitimate concerns expressed before the commission. Zvook recommends that commissions in the future be staffed with non-ex-ministry personnel and politically unbiased commissioners and that arm's-length provisions be clearly stated and adhered to."

In addition to the conclusions and recommendations I mentioned in my letter, I would like to urge the standing committee to communicate to the Minister of Education (Mr. Conway) that the commission report to be submitted to him in the spring of this year may well be to some extent invalid due to a lack of arm's-length relationship between the commission and the Ministry of Education.

I have cited one specific and provable incidence of a document leak. There may be others we are not aware of. Zvook Corp.'s experience may well indicate that the value of such commissions is questionable unless rigid guidelines are instituted regarding issues such as leaks of written submissions and arm's-length dealings between commission members and various ministries, the disclosure of interest and such similar issues.

To conclude my remarks regarding my experience with the Commission on the Financing of Primary and Secondary Education, I am frankly appalled at the lack of responsible action of very senior persons such as Ian Macdonald, chairman of the commission, and George Podrebarac, the Deputy Minister of Education, who regrettably was involved right in the heart of this issue and who

regrettably also did not provide what I felt was an adequate explanation for the leak of the document.

This indeed is a poor example of behaviour and certainly it is not in the interest of Zvook Corp. or in the interest of the people of this province.

I would like to refer briefly to the second point in my letter to Mr. Breaugh. There I suggested that a commission be set up to examine the policy, funding and activities of the education technology development division within the Ministry of Education.

Subsequent to writing my letter to Mr. Breaugh, I learned it is not necessarily within the mandate of the committee to make recommendations as to the subject matter of any future commissions of inquiry. However, if this issue is of interest to any of the members, I would like to have a word with you to find if there is some appropriate means to locate this particular subject matter.

The reasons for suggesting this review deal specifically with the issue of suggesting ways in which the ministry can spend its money a little more wisely in the area of instructional technology.

It is the position of Zvook Corp. that the ministry is now squandering many millions of dollars in this area without what we feel are demonstrable benefits. Obviously the provincial budget is very large. Many dollars flow though on a continuous basis.

Perhaps the members of the committee would be interested in the specific issue of educational technology. It is one that is very important for the effectiveness of training and education delivery in this province. If any of the members are interested in pursuing this point I would be delighted to talk to them about it.

Essentially that concludes my remarks. I would be happy to entertain any questions or remarks.

Mr. Chairman: Are there any questions from any members of the committee? There is one are that I would like to explore a bit with you. One thing that is directly before the committee now is this matter of conflict of interest.

In a number of other jurisdictions they use techniques such as declarations of your interests and things like that so that when they appoint someone to a commission of this nature, for example, at least they begin the process by having a clear declaration of what might be considered a conflict of interest. Central to a lot of the appointment-making process is to try to determine beforehand whether someone has a conflict, in other words, a vested interest in what that commission does.

As you heard in the previous presentation, sometimes it appears that groups who would be directly affected by that particular agency are totally unrepresented. On other occasions this committee is well aware, and argument is made at some length, that you must appoint people who have background, who have some experience in that field, or they cannot make judgement calls.

How would you try to resolve that one for us? Would you have any comments on it?

Mr. Nitefor: From my experience I certainly would have liked to have seen that some procedure be instituted that all submitters to any kind of a commission be treated equally.

In this particular case, the Commission on the Financing of Primary and Secondary Education, there were probably at least 50 submitters and I believe I was the only private sector company represented. Most people there were boards, municipal bodies, so on and so forth.

By any measure, I was probably the smallest entity making a representation and it certainly was my distinct feeling that simply because I am a very small private sector company that somehow I do not rate a fair consideration, as opposed to submitters that are bigger and stronger. Perhaps some sort of procedure can be instituted to ensure a fairness of hearing.

I was also disappointed by the fact that I brought this to the attention of the chairman, Mr. Macdonald, and what I received back from him was a letter with mildly veiled threats of legal action against me, which I think were completely inappropriate. I also wrote to the commissioners to respond to my concerns. There was obviously no response.

It is the procedure with which the business is conducted I am concerned with. I will leave it to the wisdom and the insight of the members to come up with some thoughts and ideas of how that can be circumvented. Certainly I found the degree of cosiness between the commission and the Ministry of Education of a completely unacceptable character.

Mr. Martel: I am trying to get my head around. You must excuse me; I do not know the problem. I have read the letter a couple of times and I am trying to get what you perceived actually as the problem. I have listened carefully. Obviously there is a conflict. Before I can understand your recommendation I would like to know what the real conflict was between you and the commission.

Mr. Nitefor: I would not say that it was necessarily a conflict. The problem was that my company's written submission was leaked to the Ministry of Education, clearly and contrary to the commission's supposed regulations.

The fact that my document was leaked to the ministry certainly impeded by company's ability to do business with the province or discuss the subject with the province. I think my company's position was highly prejudiced by the fact that the document was leaked.

That is a very serious concern to me. I have a business to run. I want to employ people. I want to create jobs. Through my product I also want to serve a certain constituency. I believe that process was seriously impaired by the fact that the commission was sloppy in its administration or treatment of written submissions. I hope that answers your question.

Mr. Mancini: What exactly was your submission? Now that it has been leaked to everybody, I guess it does not matter if we know.

Mr. Nitefor: Right. The commission's report, incidentally, will not be out until the spring of this year, I understand. They have been some severe delays there.

Essentially the position of Zvook Corp. in its submission was to draw to the commission's attention what we felt were shortcomings in the way the ministry was administering the introduction of learning technology or instructional technology.

Mr. Mancini: What is this commission doing? What is the mandate of this commission?

11 a.m.

Mr. Nitefor: The mandate is to make recommendations on issues dealing with the financing of primary and secondary education--

Mr. Mancini: In a global sense.

Mr. Nitefor: --in a global sense, and our submission dealt with the financing and administration of instructional technology.

Mr. Mancini: Computer hardware and software--

Mr. Nitefor: Computer electronic equipment to assist in training and education.

Mr. Mancini: I am trying to get to the heart of this. Basically, your submission was, "I have a certain product that can be used in the educational system at a certain cost and there will be certain benefits".

Mr. Nitefor: Absolutely not. I stayed completely away--

Mr. Mancini: Let us get more to the point of what we are talking about here. I am like Mr. Martel, in order for me to make a proper judgement on your letter, I have to understand the background a little better. I am sorry if our questions sound somewhat pedestrian, but we have to get to the heart of this.

Mr. Nitefor: In my company's submission, we made no reference at all to our company's product in order to keep our hands clean. Our position was that we had some very serious questions about the way the Ministry of Education is administering the expenditure of funds on instructional technology, but certainly we did not use--

Mr. Mancini: In equipment that they bought?

Mr. Nitefor: --in the equipment and the administration and the activity of the personnel. We in no way used that platform as a soapbox to promote our own product--not with one word. That

was not our intent. It was simply a commentary on how the Ministry of Education is administering instructional technology and the department that deals specifically with that is the education technology development division of the Ministry of Education.

Mr. Mancini: You say this commission has a mandate to review these expenditures in a global way and their guidelines suggest that anything they receive must be kept in confidence.

Mr. Nitefor: Yes, I was told over the phone that written submissions are confidential until the release of the commission's recommendations to the minister. That is still going to happen in the future and this leak occurred last year. It is only through sheer accident that I discovered this leak.

Mr. Mancini: How did you discover this leak?

Mr. Nitefor: I discovered this leak by showing up at the commission hearing. There was a fellow sitting beside me who had a copy of my submission on his lap.

Mr. Mancini: Who was he?

Mr. Nitefor: I have his name, but not with me.

Mr. Mancini: Was he from the Ministry of Education?

Mr. Nitefor: He was from the Ministry of Education. So it was just by sheer coincidence that I discovered that this written submission was leaked.

Mr. Newman: Was the submission marked "confidential"?

Mr. Nitefor: That was something that was certainly known to all people, that any submission is confidential.

Mr. Mancini: Did you have a letter that stated such?

Mr. Nitefor: That what?

Mr. Mancini: Did you have a letter or a copy of the guidelines that stated that all submissions were confidential?

Mr. Nitefor: I was told that was the case and when I asked for written confirmation of that, I was refused.

Mr. Treleaven: Was this one of the three commissions that former Premier Davis set up in 1984: the Shapiro commission and the implementation commission? Was this the third one that you are referring to?

Mr. Nitefor: I do not know that.

Mr. Treleaven: It sounds like it.

I am curious to ask a question of a researcher or anyone in the room. When a commission like this takes on a task and brings in a report with recommendations, are all of the submissions made

to that commission to be in confidence until after the report or is it part of the commission's mandate when they get submissions to ask others knowledgeable in the field to comment upon it? Is that possible?

Mr. Chairman: I would think the normal process would be that there are hearings held under the Public Inquiries Act and so it would be rather unusual under that act to have a confidential clause put in. It would not be unusual for a commission or agency of the government to receive something in confidence, but you really cannot have a private public inquiry. A public inquiry is, by its very nature, public and when documents are tabled with a commission, it should be made clear to everybody that they are public documents. There does seem to be something amiss here and perhaps we could take a look at it and see exactly what did go wrong.

Any further questions? We thank you very much for coming before us today.

Mr. Nitefor: Thank you very much.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

Mr. Chairman: The final submission on appointments this morning is from local 543 of the Ontario Public Service Employees Union. Gwendolyn Smith is the chief steward and this is, I believe, the last submission that you have in your binder this morning. It is marked as exhibit 50.

To assist the witness somewhat, we would like you to make any comments you want and then we will open it up for questions from the committee. We are just beginning the public hearing process, so we are interested in hearing people's problems and your advice and suggestions as to things we might do, so just proceed.

Mr. Turner: Do we have a copy?

Mr. Chairman: It is the last one in your binder.

Ms. Smith: OPSEU, local 543, of the Royal Ontario Museum welcomes the opportunity to further comment on the procedures by which appointments are made, particularly to boards of public institutions falling under the aegis of the government of Ontario. We thank the standing committee for the opportunity to do so.

By way of background, the ROM staff of local 543 are a diverse group of highly skilled and educated professionals and workers who are responsible for the public programming of the museum; the planning, design and production of its exhibits and permanent galleries; the formulation and execution of its education programs; and the research and maintenance of the museum's collections.

The staff work to serve the public interest. Many staff are actively pursuing careers in the museum field and are therefore genuinely concerned about how boards of public institutions are

constituted and representation determined.

Although the following comments and recommendations frequently pertain to our specific example--that of boards of major cultural institutions--we believe these comments and recommendations can beneficially apply as general guidelines in other areas of the standing committee's deliberations and work.

One of the first issues we would like to address is that of broader representation. One of the major pleas in our brief to this committee was for broader representation. Representation on boards of major public institutions should really reflect the rich tapestry of Ontario society and its varied community interests. Such boards should reflect a broad public mandate incorporating the public interests of ethnic groups, visible minorities, the labour community, the arts community, academic and educational spheres, to name but a few examples.

As stated in the brief, cultural institutions have acquired unfortunate reputations as elitist institutions. This image is only publicly reinforced when boards of trustees are composed primarily of representatives from specific sectors of society--the business world and high society.

Boards of trustees of public institutions are intended to be guardians of the public trust. Major public institutions falling under the jurisdiction of the provincial government belong to the people of Ontario. In fact, these institutions often derive most of their operating revenues from Ontario taxpayers. As such, the people of Ontario have a right to have the rich multitude of public interests represented on boards of public institutions and the government has an obligation to ensure this right is realized.

We would like to add one final point to the issue of broader representation. There should be greater efforts made to account for the various regional or geographic interests of Ontario citizens. Quite often, representation is confined to the Metropolitan Toronto area and immediate vicinity, with some representation from southeastern and southwestern Ontario.

All too often, northern Ontario is forgotten, the excuse being cost. If this committee endorses the criteria of regional or geographic representation as important to the whole concept of broader representation, then the means, including financial, should be provided to realize this important and specific criteria.

11:10 a.m.

The following comments and recommendations are intended to address the issue of how appointments should be made. In the overall, we believe a policy and set of objectives and democratic procedures should be established by the government which outline how representation on boards of public institutions is determined.

An objective selection process is needed when determining appointments to boards of such public institutions as museums. Appointments should be made on the basis of qualifications and merit. Input into such appointments should be directly solicited

from the public and a wide variety of Ontario community interest groups.

Detailed applications and resumes by candidates should be required, and all applicants should disclose any conflicts of interest.

We do not recommend that boards of public institutions have direct influence in determining who will sit on those boards. Such a practice tends to make boards of public institutions insular, adversely affecting any incentive to innovate.

At present, appointments are determined by the Lieutenant Governor in Council, and this is true for the Royal Ontario Museum under the act of Parliament.

We would strongly recommend that appointments to boards of public institutions be made by a joint party committee, thereby lessening the possibility of appointments being made on the basis of patronage.

Appointments should in all instances serve the public interest and not the governing party in power. Appointments should be subject at all times to public scrutiny and where possible and feasible, public approval.

In conclusion, we would just like to say that the potential of public institutions can be increased considerably by requiring their governing bodies to be truly representative of the communities they are intended to serve. Achieve through a process of objective and democratic procedures for determining such representation.

These comments and recommendations are respectfully submitted by OPSEU Local 543 of the Royal Ontario Museum.

Mr. Chairman: Any questions? David?

Mr. Warner: First, thank you for appearing here this morning. I would like to ask a couple of questions about the present composition of the board, if you can comment that.

How many members presently sit on the board?

Ms. Smith: There are, I believe, a total of 21, and 15 of those are appointed by the provincial government.

Mr. Warner: So out of either the 21 or the 15, can you give me some idea approximately as to what geographic regions of the province are represented?

Ms. Smith: The majority are from metropolitan Toronto. I believe there is a representative from London, from Kingston and from Ottawa.

Mr. Warner: A total of three?

Ms. Smith: I am not sure.

Mr. Turner: There is no one from Peterborough?

Mr. Martel: No one from Northern Ontario?

Mr. Warner: This is called the Ontario Museum.

Ms. Smith: There is one from Cambridge, Ontario.

Mr. Chairman: You have caused a furor, Mr. Warner.

Mr. Warner: I did not mean to get us involved in geographic war, here. I am simply trying to elicit information. How many of the board members are women?

Ms. Smith: I worked out the ratio between men and women on the 15 appointed by the province and it is a ration of three to two, men to women.

Mr. Warner: How many of the 15 are non-Anglo-Saxons?

Ms. Smith: I would have to make that judgement simply on the basis of final name and I would not like to make that judgement. I would say most of them are Anglo-Saxons.

Mr. Warner: You are saying almost all are Anglo-Saxon?

Ms. Smith: I have the list.

Mr. Warner: More than half. Are there any disabled people who are on the board?

Ms. Smith: Not to my knowledge, no.

Mr. Warner: None. Any representative from labour?

Ms. Smith: Not to my knowledge, although there has been that in the past, but it was discontinued.

Mr. Warner: Anyone who you would say very accurately reflects the concerns of the arts community or is an artist or someone who has a direct connection with the arts community?

Ms. Smith: Not to my knowledge. The only indirect association to that would be a publisher from the Canadian Collector, but I would say that would be journalism.

Mr. Warner: So the board is not necessarily an accurate reflection of the treasures which they are entrusted to keep.

Ms. Smith: At the present time, I would not say so.

Mr. Warner: Any Francophones on the board?

Ms. Smith: Not to my knowledge.

Mr. Warner: So it fits into the general pattern which we found with boards, agencies and commissions, and that is, Mr.

Chairman, for the most part, boards, agencies and commissions appointed by the government are individuals who are male, Anglo-Saxon and powerful and usually friendly with the Progressive Conservative party.

Mr. Treleaven: Point of order, Mr. Chairman. Mr. Warner has editorialized. I do not think the witness has used that statement.

Mr. Warner: No, I did. I did not put words in the witness' mouth. She can speak quite well for herself. I said, that if falls into the traditional pattern which we have discovered in our meandering.

Mr. Chairman: I think maybe we are waking the members up.

Mr. Warner: A dangerous thing to do.

Mr. Martel: Do not tease the bears. I would like to ask a couple of questions. Is there anybody from the academic community?

Ms. Smith: There is a former curator on the board, but he came through the members' group. There are three elected from the membership of the museum, so he comes by that route.

Mr. Martel: Who would you say that this group best represents? The business community, or what?

Ms. Smith: If you take a look at the list, beside names their workplaces are listed, and hence their businesses are listed. You do get a lot of people from investment firms, lawyers, and various other business representatives.

Mr. Martel: It sounds like a wonderful group.

Mr. Turner: You said 15 of the 21 were appointed by the Lieutenant Governor in Council. How were the other six appointed or how did they become members of the board?

Ms. Smith: You have three ex-officio members, two of them are from the University of Toronto and one is the director of the museum. The other three are elected from the membership of the museum at large.

Mr. Turner: So you have three from the general membership, and then you have three ex-officio. Is that what you are saying?

Ms. Smith: Yes. Two are always from the University of Toronto; the Chairman of the governing council of the university, and I believe the president, as well as the director of the Royal Ontario Museum.

Mr. Turner: Do the ex-officio members really wield influence or take part in the decision making process.

Ms. Smith: I would not be able to comment on that with

any accuracy.

Mr. Mancini: Can I ask one more question--

Mr. Chairman: You are on everybody's list. Mr. Mancini.

Mr. Mancini: I am quite surprised as to the composition of the board due to the fact that there are no Francophone members. I found that quite astounding, as a matter of fact. Have there in the past been people from Francophone community appointed to the board?

Ms. Smith: I would not be able to comment on that. I have only been at the museum five years.

Mr. Mancini: In the past five years there has not been a Francophone on the board?

Ms. Smith: Not to my knowledge.

Mr. Warner: Do you know how often the board meets?

Ms. Smith: I believe it is once a month. Sometimes they do not meet during the summer months.

Mr. Warner: Has the board ever met in a location other than the city of Toronto?

Ms. Smith: No. To my knowledge, the board meets at the Royal Ontario Museum.

Mr. Warner: So while a handful of board members may be from places other than Toronto, all of the meetings are in Toronto?

Ms. Smith: To my knowledge, they have all been at the museum.

Mr. Martel: Has there ever been anyone from Northern Ontario on this board, to your knowledge?

Ms. Smith: I do not know.

Mr. Martel: Not even some Tory who was defeated?

11:20 a.m.

Mr. Bossy: My question is based on the question: Is there anyone from labour? You made the comment, "No." Now would you know what the personal background has been in the lives of the 15 members of the board appointed by the Lieutenant Governor? I am trying to get a definition of labour.

Mr. Warner: A real live, breathing working person.

Mr. Bossy: We are all working persons. I want to see the background of the members that have been appointed. None of these members, as far as you are concerned, had been a worker in their lives before they became whatever they became, as far as labour is

concerned. It is hard to define.

Ms. E. J. Smith: You can say they are workers. What we were saying is that within Ontario society there is a labour community. They would not be official representatives from that group.

Mr. Bossy: What I am trying to connect is not affiliated or has nothing to do with union or organized labour. None of these people has a background of being just an ordinary labour person and then becoming a businessman, but these people still have good experience as far as being labour persons.

Mr. Warner: So it is possible that there is a different story in there somewhere.

Mr. Bossy: It is hard to answer the question and say there is no one from labour. How did he find that in there? I do not know the people that happen to be on the board or any of their background and I had nothing to do to recommend any of them.

Mr. Warner: You said earlier at one stage there was an appointment by the Ontario Federation of Labour.

The Vice-Chairman: Just a moment, Mr. Warner. Mr. Bossy, are you finished?

Mr. Bossy: Yes. I wanted to have that clarified because to say that there is no one from labour, unless we know the background of the people that are appointed, we would want to make sure that that is factual.

Mr. Warner: Just to pick up on that, what you said earlier was that at one stage, there was a process by which a labour appointment would end up on the board.

Ms. E. J. Smith: It was our understanding that in the early 1970s interest expressed by the public caused the government to actually appoint a representative from the labour community who happened to work for the Ontario Federation of Labour. Recommendations were solicited from that body, and a person was appointed to the board. Thereafter, the practice was discontinued after a certain point.

Mr. Warner: The government did have a way of identifying a working person and of making an appointment. In their wisdom, they later decided not to follow that practice. That is the story which is being unfolded, notwithstanding the difficulty you have in identifying who is a worker and who is not a worker.

Mr. Bossy: I find it hard to define myself because I have never been recognized with a labour union of any kind.

Mr. Warner: You have never worked a day in your life.

Mr. Bossy: I have been a labourer all my life and here I am a member. In the end, if an appointment such as myself would be made on a board--

Mr. Turner: Are you suggesting one? Which one of them?

Mr. Warner: Members do not work.

Mr. Bossy: No, but I do not want an appointment. Would I be identified as being a nonlabour person?

Mr. Martel: I am sure you would. We are talking about the community of interest, the Ontario Federation of Labour through the organized labour movement. There is a community of interest. It is not just this board, Mr. Bossy, that worries us. It is other boards--hospital boards, community colleges, universities--where a large segment of society, by and large, is very deliberately left out or might get one token representative. Yet it represents a community of interest as would the business community. I am not saying that one should be on and the other should not. There should be some kind of balance. They do make up a significant portion of society.

Mr. Bossy: I am not trying to defend the former government's way of appointing.

The Vice-Chairman: Thank you, Mr. Martel, for your thoughtful comments.

Mr. Morin: You mentioned that the majority of the members are from Toronto. Was it for reasons of convenience, because it is closer or easier to get the meetings organized or cheaper?

Ms. E. J. Smith: I am not entirely sure of the criteria or the procedures by which the government appointed these people.

Mr. Morin: What is the per diem, if I may ask?

Ms. E. J. Smith: I do not know that these people receive any.

Mr. Morin: They do not receive any per diem?

Ms. E. J. Smith: Not to my knowledge. I think their expenses are covered.

Mr. Morin: How many of these people are from outside of Toronto?

Ms. E. J. Smith: As I said, there is someone from Kingston, someone from Cambridge, someone from Ottawa and I believe there is someone from London.

Mr. Morin: You also mentioned that there were no native people on the board, although they do contribute an awful lot to the arts in Ontario. They create a great impression on the arts, but was there ever any native person on the board?

Ms. E. J. Smith: Not to my knowledge.

The Vice- Chairman: Are there any other members of the committee who wish to ask questions or make a short statement?

Ms. Smith, we want to thank you for appearing before the committee. We have found your information to be very thoughtful and very useful. We thank you for being here and we are going to move on to the next subject area. Thank you again.

TELEVISION IN LEGISLATURE

The Vice- Chairman: Members of the committee, our schedule and agend reads that we are at this time to discuss televising the proceedings of the legislative assembly. There are some officials here, if they could just step forward. Tom, could you introduce yourself to the committee and we will get moving along.

Mr. Mitchinson: Thank you. I believe most members of the committee have already met me.

The Vice-Chairman: Tom, just introduce yourself for the record.

Mr. Mitchinson: I am sorry. I am Tom Mitchinson. I am the director of information services for the Legislature. Beside me is Michael Applin, who is a consultant with the Coopers and Lybrand Consulting Group, who has been working with the assembly on the implementation of the electronic Hansard system.

We are just setting up here for a presentation which will be delivered by Mr. Applin, essentially in two parts. One will be a report on the results of the trial period that took place in November and December and the final part of that presentation will be a 17-minute video clip which shows you the committee's guideline coverages that were tested during the period. That will be followed by a presentation, again by Michael Applin, on the architectural ramifications of implementing the electronic Hansard system in the chamber.

Before we get under way, the one aspect we are still considering on this coverage is the idea of providing service to the hearing impaired.

The Vice- Chairman: Members of the media can, if they wish, can make themselves comfortable. There are a couple of chairs up here.

Mr. Treleaven: Mr. Breaugh was never that nice to them.

The Vice-Chairman: Tom, go ahead.

Mr. Mitchinson: I was just saying we will be prepared in two weeks' time to make a presentation to the committee, if it is agreeable to the committee, on the issue of service for the hearing impaired. I do not know if I should deal just with the clerk on the scheduling of that, but in that time frame, we can have something for you.

The Vice-Chairman: Get in touch with Smirle and Smirle will speak with our chairman or myself and we will get this thing on a schedule basis.

Mr. Mitchinson: Okay, very good.

I will turn it over to Michael Applin.

11:30 a.m.

Mr. Applin: Are those overheads visible to everybody?

As Tom said, this is a two-part presentation. The first part is a report on the results of the four-week test we conducted from November 18 to December 13 last year. The second part is the issue of architectural considerations arising from our proposals.

I am going to take you through, first, a very brief overview of what we did for that four-week period and then move straight into results and recommendations. They are broken down into four key areas: the issue of lighting, camera location, the type of camera and lenses we are proposing to use and the audio system.

There are three or four other points I want to raise: the outcome of a brief survey we did on working conditions for members, recommendations concerning staffing of the television unit, issues we learned about during the period of the test, relationships with the media during the test, a brief summary of the budget and our actual costs and then our view of the procedural guidelines, which we tested during the four-week period. We will conclude with a brief 17-minute video, which I think you will find very instructive.

We conducted the test with five tripod-mounted cameras in the House. Four of them were on boxes, two on each side, and one was in the Speaker's gallery in the centre. During the period of four weeks, we tested several different camera types that were loaned to us by manufacturers and several different lens types. We also made a lot of modification to the House lighting in order to try to determine a balance between the most appropriate configuration for broadcast quality television and also the physical comfort of members during the test.

There were several things we did, including turning off the spotlights in the gallery and putting heavier lighting in the chandeliers, uplighting in the chandeliers, which bounced off the ceiling, putting console lighting in the four corners of the gallery on a temporary basis to try to bounce off the walls and off the gallery. We also put wide angle screens in the spotlights to try to cut down the glare.

We provided taped output to the Office of the Premier, to the project team, to each project caucus, to the library and to several other interested parties. You may have already seen some of that output.

We also provided live feed to member lobbies. Big colour TV sets were set up in members' lobbies, to the Speaker's gallery,

for the press cameras that were there, to the Speaker's office and to the press lounge. I want to point out, however, that we did not make any modifications to the existing audio system and that was the cause of some comment from the observers.

Let me move right into the results and recommendations in the test. I want first to deal with lighting. Lighting is the most complex issue to deal with and continues to be an area where we are working.

We made several changes during the test. First, overall the lighting levels were reduced significantly. Second, we put stronger bulbs in the chandeliers to upright and bounce off the ceiling and we attempted to vary the lenses in those spotlights sitting underneath the galleries and also put screens on them to try to reduce what has been considered by most members to be an objectionable level of glare and quite a trying environment to work in.

What we found from our test was that the minimum level of lighting required to provide broadcast quality pictures and also meet the lighting needs of the press in the Speaker's gallery is about 40-foot candles. That is about half of what we previously had in the House with all the lights on.

We did manage to reduce the glare significantly, but as you will see when we talk about the results of evaluation, members are still very concerned about glare. At the end of the test, we concluded that we still had some considerable amount of work to do to come up with a satisfactory solution to the lighting issue. In my next presentation, the one on the architectural considerations, I want to come back to this issue of lighting. What the test showed us was that we had not solved the problems with the variations and the modifications we put in place during that four-week period.

Are there any questions on that?

The Vice-Chairman: I think we will hold the questions.

Mr. Applin: Fine. Let me go right through then.

Let me deal next with camera location. We tried three basic configurations, A, B and C. You will see them on the slide there. Camera 3 was always in the press gallery trained on the Speaker.

The cameras on either side of the House were varied. We tried them closer to the Speaker on the doorway side closest to the Speaker; we tried them on the doorway side farthest away from the Speaker. In configuration C, we tried three cameras on one side just to see whether it was necessary to provide that level of coverage.

What we found from this configuration testing was that three cameras on one side or on each side are really not considered necessary. It does not add that much more coverage or that many more shots that we cannot get to with two and it is a considerable increase in expense.

We also confirmed our original proposition, which was to put the cameras over the doorways into members' lounges. You will see when we look at the tape that gives perhaps the best coverage and the most variety of coverage to increase the viewability of the broadcast of the proceedings.

We also tested several different types of cameras and types of lenses. We tested them in situ in the House on the tripods and we also benchmark tested them in a lab to confirm what we were finding in the live test. As could be expected, we found that given the lighting level we wanted to achieve in the House, certain cameras did not perform particularly well. We managed to determine which ones did and which ones did not.

We found that that lives lenses, which performed extremely well, were heavy, costly and would also require a considerably large opening in that aperture above the doorway and would have, we judged, severe architectural implications on the House. When we shifted to shorter lenses, they did not exhibit the required light efficiency.

What we have come up with is a compromise lens-camera combination that gives us the best performance. I do not need to go into the technical details of the kind of lens type that we have chosen but we have determined the most appropriate combination of lens and camera.

We did not modify the audio system during the period of the test. You will notice on the tape that this is reflected in the quality of sound. It was an issue from several members of the press gallery, particularly the print press, who uses the audio system to plug in their tape recorders and try to pick up verbatim quotes. The quality of the audio system is so bad that it cannot often be done and they were most vociferous while we were there in commenting on the inadequacy of the audio system.

We left a number of evaluation sheets on each member's desk and asked you to make comments throughout the test when you considered it was important. We received 114 evaluation forms from 43 individual members and two clerks. You can see that some members were very interested in this and responded on several different days during the test.

We measured on the basis of light intensity, glare and heat and we asked them to comment whether it was too low, adequate or too high. You will see from the results from that little table there that for the most part members felt that light intensity and the heat were both adequate but that the big issue was the glare. Seventy-nine per cent of members who responded felt the glare was too high.

Of the 114 forms that were returned, only two had comments other than those relating to lighting.

The Vice-Chairman: What were those comments?

Mr. Applin: One was on the poor quality of the audio

system and the other was on the split-screen technique we were using. There are two options. You can have a sharp line between the two sides of a split screen or a fuzzy blurred line, a blended split screen. The person who commented felt the sharp line was to be preferred over the blended version. The results of that test tie back to what we were saying earlier about the inadequacy of the lighting system.

11:40 a.m.

Although we were working with contract crew and a contract director, it gave us an opportunity to try working the system of taping, instructing cameramen, putting up the subscript to show the member's name. It gave us an opportunity to consider the staffing of the unit and the number of people and the kinds of people we think we need for the permanent system. Our original proposal seemed to hold up as a result of the testing we did.

We obviously considered the need for an overall manager of broadcasting with a staff video technician. In the Assembly, we feel we need two remote camera operators, trimming the cameras that will be preset by the computer system; a videotape operator who will be loading videotapes to record and generally will be filling in; and a technical director who will make certain choices about the video picture to be shown. In a committee room we will need a technical director, a video switcher and one camera operator.

Outside of question period, which is the busiest time from the TV camera unit's point of view, the House unit may only require one camera operator, but we have not decided that finally.

We would require that both operators and technical directors be capable of switching between the House and the committee room, and also of switching between positions, so that we have ultimate flexibility to cover for vacations, illness, the usual kind of staffing problems.

We were in close contact with members of the media throughout the test. We provided monitors for representatives in the Speaker's gallery so that people who were working the TV cameras could also see the output we were providing, and it was also in the press lounge. We were very pleased with the interest shown by members of the media. They were interested, several comments and were most helpful in some of the suggestions they made.

We held a press conference at the conclusion of the test where we showed the edited tape. You may have seen some of the feedback we got. There was coverage in several newspapers and also on several TV stations. The members of the media were helpful in making many suggestions, which we have taken down and will be incorporating in our final design. All in all, it was a useful and collaborative venture.

Our original budget for this test was \$130,000. As of last week, when we were still totalling up the final bills, actual expenditures were \$126,000. We overspent in certain areas and

underspent in other areas. In particular, we overspent in the cost of videotape. We expected to get more that we could reuse than we actually did, but that is not really a cost that is lost. When the permanent system comes into operation, we can reuse those tapes as we get them returned.

The Vice-Chairman: Do any members have questions about this item? It is going to be hard for us to remember each expenditure. It might be appropriate to have questions.

Mr. Turner: Can we go back to an earlier submission or part of a submission?

The Vice-Chairman: If you make a note of it, we will do that.

Mr. Turner: I have.

Mr. Applin: I would like to show the last two or three slides before we take questions, and then switch to the video. They have to do with the procedural guidelines. One of the main reasons for doing this test was to consider guidelines for the TV unit with respect to covering proceedings. The procedural affairs committee in its report of September on this issue proposed a series of guidelines, some 17 or 18 guidelines, that we were asked to review during the test.

Before I get into the details of what we concluded, let me take you, activity by activity, through the observations we had in trying to cover the various proceedings of the House.

Question period is the most dynamic from the point of view of the TV unit. There are a lot of individuals involved, rapidity of events, a lot of reaction, interjections. What we found was that judicious use of such techniques as wide-angle shots to show reaction of the opposition or the government, interjections, split screens where we could line up eye shots and where members of the opposition and the government were going backwards and forwards, added to an understanding of what was going on on the floor of the chamber.

This is particularly so in regard to comparing what we were trying to do with what other legislative chambers do when they try to cover with television. I am thinking in respect of Saskatchewan and in respect of the House of Commons. Noise is going on in the House of Commons and you do not know what it is about because the TV camera does not show it.

However, I want to point out that sometimes things happen so rapidly in question period that you cannot use all these techniques, particularly techniques such as split screens that take time to set up. To a certain extent, we will be limited in the use of these techniques by two aspects. One is that you sometimes cannot set them up properly in time, and second, you have to be judicious in their application to preserve the decorum of the House.

Can we move on to discuss the general debate aspect of the

House? From our perspective, it is generally simpler to cover because there is less rapidity of action. However, we found that by varying the shot from the two cameras on either side or by over-the-shoulder shots we can add interest. However, we did notice that wide shots tend to show the chamber as relatively empty by comparison to question period. You would have to be careful as to how you should do that.

Voting is difficult to cover. We tried panning along the benches as members rose to record the vote, but it is not a particularly accurate way of covering voting. It certainly could not be used to count votes. Our recommended approach to dealing with voting is to use a wide-angle shot to show the activity in process in overview, rather than trying to follow the rapidity of the action as it moves along the bench. It would be like trying to film a field of wheat.

Raising bills and petitions is not easy to cover because the action is often fairly rapid. One option we tried was to focus on the Clerk of the House reading the bill or the petition into the record. One thing we were not able to test during the trial period was an information scroll along the screen. We did not have the facilities to do it for the test period, but it appears to us that it is during this kind of activity when the information scroll will be most useful, because it provides an opportunity to show the viewer exactly what is happening.

We propose to have this in the final system. It will require us to co-ordinate carefully with the Clerk of the House and the assistant clerks to prepare the information and also to provide it as the action is happening. Our view is that the understanding of this activity can be considerably enhanced by providing the information scroll.

Mr. Warner: Did you attempt during the test period to try focusing on the member who stood to introduce a bill?

Mr. Applin: Yes, we did. We have several--

Mr. Warner: You found it was too difficult, meaning the member had started into his or her presentation before the image showed on the screen. Is that what happened?

Mr. Applin: I think it is more the process that takes place after the member initially stands, where the bill is given to the Clerk's table, the Clerk gives it to the Speaker, the Speaker to the Clerk and back. I do not believe there was difficulty in focusing on the member who introduced the bill. It was subsequent to that.

Mr. Warner: Is it your intention to retain that aspect?

Mr. Applin: Yes.

Mr. Warner: After the member has spoken, introducing the bill, maybe you could go to the Speaker or--

Mr. Applin: Yes.

Mr. Warner: Good. I was concerned by the way you presented it that we were going to lose that opportunity of presenting the member on screen.

Mr. Applin: No.

Mr. Turner: Getting back to the point that I think got the most contention in the House itself, the glare or level of lighting, is there any way that you perceive the spotlights can be done away with and the level of lighting maintained to keep the quality of it?

Mr. Applin: In the next presentation, a video, I am going to deal with that exact issue. We did go back to the drawing board after December 13 and do have a proposal we would like to discuss with you.

11:50 a.m.

Mr. Bossy: To follow what Mr. Warner was saying about when this is put in place, I understand these are automatic cameras and will be controlled by the person who turns on the speaker, and that automatically takes place when the Speaker identifies who has the floor. That is automatic.

Mr. Applin: Yes.

Mr. Bossy: Now for the follow-up, introduction of bills, as to the other thing that will take place immediately afterwards when it is carried to the front, is there not one of those cameras, camera 3 in this case, that would be sitting on the floor and that would be switched on? Someone has to do that.

Mr. Mitchinson: It would be manual operation. Camera 3 would be used but the pre-programmed shot for camera 3 would be a waist-high shot of the Speaker in the chair. To cover the Clerk and everybody else who is appropriately captured by that camera, there will be a manual intervention to cover the process.

Mr. Bossy: There may be a slowdown. Perhaps we would have to program the Speaker to slow down the process. They do it in all sports now; time out for an advertisement.

The Vice-Chairman: I think that is a good point by Mr. Bossy. Camera 3, which is on the Speaker at all times, could be at a wider angle to catch the whole table and it would be automatic.

Mr. Applin: The last item of detail on the procedural guidelines that I would like to mention is that during the test we experimented with a variety of shapes and sizes of cutouts for sign-language translators, if we go with that system. You may have seen some with a big, black blob moving around the screen. We concluded that the most appropriate shape is a disc and that the most appropriate place is the top, right-hand quadrant of the screen with a soft outline, in the same way as the House of Commons does it. That does not mean we are definitely going with that approach, but we tested that while we were there.

We went back to the drawing board with your procedural guidelines, considered what had been written and we are suggesting the following amendments. What you see here is the original guideline in small letters and our suggested amendment in large letters. Let me take you through the first one; there are only three.

You had recommended that, "Only the member who is on his or her feet and has been recognized by the Speaker shall be recorded by the audio-visual cameras." We suggested broadening that a little to say that the audio-visual "shall concentrate on the member who is on his or her feet and has been recognized by the Speaker."

The Vice-Chairman: Before we go on, this is very important. This committee worked long and hard to come up with numerous recommendations that were more or less agreed to on a unanimous basis. I point out that, before you proceed with these changes, this committee is going to have to deal with your proposals because of the work we have already done and because of the unanimity we have. We would like to proceed on the basis of some kind of unanimity. We will certainly accept and consider any of your suggestions, but that may not necessarily be what we agree to.

The other matter, as the clerk has aptly pointed out to me, is that some of this has gone before the Board of Internal Economy and this committee may not necessarily agree with the Board of Internal Economy. This was turned over to us by the House and we have the ultimate responsibility. Of course, we want to have our views co-ordinate with those of other committees of the House, such as the Board of Internal Economy. We want to work with them. I just point that out so that you know and so that the members of the committee are aware that this is still under our responsibility.

Mr. Mitchinson: We found that the guidelines adopted by the committee were almost without exception confirmed during our test. At some points in the committee's report, there were techniques referred to in the body of the report that were not necessarily incorporated in the exact wording of the coverage guideline. I think the three suggestions we have to make are all within the spirit and body of your original report. We are not talking about any significant variation. I know that was the view of the chairman as well when he saw this.

The Vice-Chairman: The clerk has pointed out to me that our recommendations have been adopted by the House and that any changes to our recommendations will have to be adopted by the House. That makes the situation even more sensitive because we want unanimity, we want all-party agreement and we think we can get all-party agreement. It starts right here, by us working together; as long as we know the ground rules.

Mr. Mitchinson: I realize what the procedure is to amend them. As far as the operations staff is concerned, it is a very delicate matter for the staff that is going to be implementing

this system. It is important that a direction is given by this committee or whatever the appropriate body is, so that the spirit of what we are suggesting, if you agree to it, is there and that these people are not compromised at some point by somebody saying, "You cannot do this," and, "Where does it say this in the guidelines?" That is the only concern we have about it.

Mr. Warner: There are three proposals for an alteration in our report. If we put it on the agenda for next Thursday and if we are agreed on it, we can submit a report and run it through the normal process.

The Vice-Chairman: We are overbooked for next Thursday, so maybe the week after that.

Mr. Warner: At our earliest convenience. Obviously, this stuff should be dealt with before the House rises.

The Vice-Chairman: Does the committee agree with that?

Mr. Applin: Do you wish me to explain the suggested amendments?

The Vice-Chairman: Yes.

Mr. Applin: To summarize, the first suggested amendment broadens the requirement that only the member who has been recognized shall be recorded, to a broader statement where the cameras are allowed to concentrate on the member who has been recognized. That is the substantive difference in the first one.

The second proposed amendment, the substantive difference is taking the phrase "applause shots" and broadening it to be a little more specific in terms of some of the other techniques we tested. We are suggesting that, in addition to "applause shots," we add "over-the-shoulder shots," "wide-angle views of the House" and "split-screen shots". We are just adding those three other techniques.

Mr. Mitchinson: These will all be demonstrated in the tape. You will see what we are getting at.

Mr. Applin: The other suggested amendment there is to expand where it says "the decorum of the chamber," to include "the decorum of the chamber or the committee room," because we will be covering both the chamber and the committee room.

The third one is slighter in a sense. You had recommended that the name, constituency, portfolio and political affiliation be shown on the screen periodically. We are suggesting an amendment to add that not only should that be done, but that it be done both in French and English and that identification be repeated at eight- to ten-minute intervals. it is a relatively minor amendment.

I want to reiterate what Tom said. From our perspective, we found these guidelines to be eminently reasonable and easy to work with.

The Vice-Chairman: Before we move on, I guess this would be an appropriate time if any members have any questions or if you wish to go back to any of the items that have been presented to us. Does any member wish to do that?

Mr. Morin: You mentioned that there were problems with the audio system. I think we all agree with this, especially when one sits in the Speaker's chair; it is even worse. Are there any improvements that are to be brought in?

Mr. Applin: The major design we talked about last time we were here includes a complete replacement of the audio system and also the sound reinforcement system in the House. I would like to talk a little more about that in my next few slides.

12 noon

The Vice-Chairman: I will allow myself one. Does the audio system have to be replaced anyway?

Mr. Mitchinson: It certainly has to be replaced in order to produce good video coverage. Whether or not, independently of any consideration of in-house video, there would have been a replacement of the audio system I really cannot say, but certainly in order to incorporate this video aspect, yes, it does have to be replaced.

The Vice-Chairman: Before this committee began working on these guidelines and discussing the televising of the House procedures, had there been any discussion of changing and improving the sound system?

Mr. Mitchinson: I do not know.

The Vice-Chairman: I would like you to check that for us.

Mr. Turner: I can say with some degree of certainty that there were in-house discussions, because it was always a problem and a problem, as has been pointed out, particularly for the Speaker. Make a joke of it if you will, but it is just bloody awful up there.

The Vice-Chairman: I have a question for the former Speaker. Mr. Turner, in your years of experience in the chair, when you discussed the matter of the sound system did you bring this to the attention of the House leaders or of the Board of Internal Economy?

Mr. Turner: No. In all fairness, it was a matter of almost personal concern, because from where the Speaker sits, there is almost an echo in the chamber. Fine-tuning was going on on an ongoing basis with the staff.

Mr. Mitchinson: With the Hansard staff.

Mr. Turner: Yes, to try to improve it with the equipment that was there at the time. However, I do not think there was any concerted effort to replace it or to spend a lot of money

improving it, because they had gone through a series of systems and each one was worse than the one before. It seemed that way, anyway.

Mr. Bossy: Having used a different sound system for four and a half years, what I have found in that House to be really terrible is the fact that certain people speak more loudly than others. That is the way it is with me. Each individual member should have control of his hearing, and this is where the big problem arises. It is a matter of where you plug in, and you should have control. That would alleviate a lot.

Even with the present system you put it on and it blows your ears off. Then someone gets up, including the Premier (Mr. Peterson), and it is very difficult to hear. You cannot hear him, you grab it and boom. A new sound system or a modification of the one we have would have to go hand in hand with the--

Mr. Mitchinson: Your concern is being addressed in the permanent installations.

Mr. Warner: You are proposing a whole new sound system. Will it have the capacity for simultaneous translation?

Mr. Mitchinson: Yes.

Mr. Warner: As well as volume control for the individual members?

Mr. Mitchinson: Yes.

The Vice-Chairman: Are there any further questions before we move on?

Mr. Martel: I would like to go back to the sound system. To my memory, it seems to me that over the years we continue to discuss the sound system because we continue to have problems with it. I am reluctant to give to the press the impression that the sound system is being put in totally to accommodate the television. That distorts the real cost.

It is like the chamber itself. All kinds of repairs are being charged to the installation of television. In fact, those repairs should have been done some time before. It cannot all be charged to what the ultimate cost is going to be, because it is going to put that cost out of whack as to what the realities are.

The sound system was certainly discussed for a number of years and attempts were made to fine-tune it, but a decision was made about a year ago, was it not, that we simply had to get a new system. I am just going by memory.

Mr. Turner: I do not really know. There was a lot of discussion. You always used to make the point, just to digress for a moment, that I was able to hear certain things and unable to hear other things. It is a fact. It is the way it is.

The Vice-Chairman: If I may just summarize the

committee's feelings, we are quite disturbed. I think I am speaking for the whole committee--and Mr. Martel touched on this--when I say that many of the alterations that are going to be made to the assembly, to the chamber itself, will be charged to the insertion of the televised Hansard, and that will greatly inflate the original estimate of the cost.

Discussions by a former House leader, input from a former Speaker and general discussions by other members seem to indicate that the sound system was not adequate and probably would have had to be dealt with in one way or another. We are very concerned, as I said earlier, that this will greatly inflate the original cost estimate.

We would like to have it broken down. We would like to have it in some way taken out of the costs of putting in place a televised Hansard. I do not believe this committee should find itself reading in the morning press that the televised Hansard is going to cost the Legislative Assembly some \$7 million--

Mr. Martel: No, \$12 million.

The Vice-Chairman: --some \$12 million or \$15 million; thank you for your help--when a lot of other things are being factored into this. This is a general sentiment of the committee, and we certainly want to have that broken down.

Mr. Warner: Am I correct that the committee's original assessment of the costs of television was pretty accurate?

Mr. Mitchinson: We are right now in the process of pulling together the estimates for the assembly for the upcoming fiscal year. One of the major elements in it for this project is to come up with an estimated dollar figure for what you are referring to as the cameras and the camera heads. Just from memory it seems to me that the last time we presented a report to this committee, the conclusion was just as you say, that what you had figured was going to be the cost for what you were assessing at that point as the project was pretty well right on.

Mr. Sterling: There should be a clarification, Mr. Warner. My understanding was that the system and the renovations, etc., would cost \$2 million. Our approval was on the basis that it would be somewhere in the ball park of that \$2 million figure.

Mr. Warner: Right, \$2.5 million or thereabouts, \$2.4 million. There was, shall we say, an unintended distortion of the figures. The press account was of \$12 million, which was \$2.5 million lumped in with the cost of renovations that were going to be done anyway. As far as the committee is concerned, we are still on target with what we had projected.

It spills over with respect to the sound. The sound system needs to be repaired whether we have television or not. It is a fortunate coincidence that we can repair it and update it at the same time as we are putting in the TV.

Mr. Sterling: Is the sound system going to cost \$9.5

million?

Mr. Mitchinson: I am not sure how that \$12 million figure ever--

Mr. Treleaven: When you get into distribution, we have \$5 million on distribution and \$4 million and something on the northern gizmos.

Mr. Mitchinson: Northern community installations certainly had nothing to do with the committee's original recommendation.

The Vice-Chairman: You understand the committee's concerns.

12:10 p.m.

Mr. Mitchinson: Yes. I share the concerns.

The Vice-Chairman: We need a detailed breakdown.

Mr. Turner: Surely you can break it down in different components.

Mr. Mitchinson: Other events are happening in the chamber as well that are even further removed from anything to do with this system, such as a new seating plan and new ventilation to go along with that.

Mr. Warner: Nothing to do with television.

Mr. Mitchinson: No.

The Vice-Chairman: If we have no further questions, then we will get on to the video.

The committee viewed an audio-visual presentation at 12:12 p.m.

12:20 p.m.

The Vice-Chairman: I sense from one of the committee members that we are not getting the full impact of this because of the lack of sound. Maybe we should do this again. Can I have the opinion of any other committee members?

Mr. Warner: It is a sound problem. Is it the cassette?

Mr. Mitchinson: Yes. Maybe we could do our other presentation, and then come back to the tape at the end of that.

The Vice-Chairman: Yes. Let us turn this off and get to the stuff that might be more appropriate at this time. It is unfortunate that the sound system is not working. Maybe next time we can test the equipment in advance to make sure it is working properly. We cannot do it next week because of the witnesses that we are going to hear. The committee will have to decide if it

wants to hold a special session or wait another two weeks. It is unfortunate.

Mr. Mitchinson: Where did the equipment come from?

Clerk of the Committee: The library--

Mr. Mitchinson: Maybe we could get it fixed and do it at the end of this next presentation, if that is possible.

The Vice-Chairman: It is 12:20 p.m. I am not sure of the schedule of individual members, but let us do as much as we can today.

Mr. Warner: We should try to carve out a separate time.

The Vice-Chairman: That is a good suggestion. We will carve out a separate time, and we will try to do this again later on. It is unfortunate that this has happened, but it is beyond our control.

Mr. Applin: The next item that we would represent to you are several architectural considerations arising from preparing the chamber for the electronic Hansard system. The contents of this very brief presentation are as follows.

We will immediately deal with the issue of lighting, the one that was raised in the previous presentation, talk a little bit about camera installation, the Hansard console, the acoustical treatment we have to do to the chamber in order to prepare it for broadcast-quality sound, sound reinforcement initiatives we are placing in the chamber to help members of the gallery and members on the floor to hear the proceedings better, the control room and the seating issue.

Since the time we concluded the test, we have spent a considerable amount of technical time trying to resolve the issue of glare. It is the most pressing problem we have to resolve. We are looking for a solution that maximizes the amount of diffused lighting and minimizes the amount of direct lighting. It is the direct lighting that is giving the glare problem.

After the test was completed, our lighting subconsultants took a look at the issue again and came up with four options, one of which is being proposed by the project team. The essence of that option is: (1) to remove the spotlights in the galleries; (2) to add even more lighting to the chandeliers to give you better bounce off the ceiling; (3) to provide additional uplighting in the public galleries, which will spill into the House and provide better light coverage; and (4), if necessary, and we have not determined exactly if it is necessary, to retain those wall sconces that were placed in the House, but to modify them so they fit in with the character of the chamber.

Our preliminary calculations of this option indicate that it provides the required level of light, it reduces the glare to a minimum because we are using no direct and all indirect lighting, and it happens to be the least costly of the four proposed solutions.

The architects for this project, Carruthers Shaw and Partners Ltd., have taken a look at this proposal. They have concurred that it is feasible in an architectural sense, and it is the most appropriate in terms of preserving the character of the chamber.

However, I would like to point out that there are several detailed mathematical computations that have to be made before we come up with a final answer to this lighting problem. Some of those take time and they are currently being done.

There are several factors, such as how well the ceiling reflects and what impact indirect lighting will have on the quality of the TV picture. You may get enough light but it may not be of the right punchiness and quality to give you the sparkle you need in a television picture.

It may be that we have to propose a minimum amount of direct lighting to put the sparkle back in the TV picture. We have not come to that conclusion yet. If we do have to propose that solution, we will be back in front of this committee and in front of the Board of Internal Economy to inform you of that. Our initial proposal is to do away with direct lighting altogether.

Mr. Mitchinson: If this initial one works, it is the best possible solution. There will be no spots at all in the chamber, and there will be no additions to the chamber that have a negative architectural impact. We are crossing our fingers on this that we can do it. If direct lighting has to be put in, it would be at a much lower level than you experienced during the test, even at the best points during the test.

Mr. Morin: When we looked at the system in Saskatchewan, it was all indirect lighting. The problem we are facing, is it the size, the way the building is formed?

Mr. Applin: It is a combination effect: the height of the ceiling, the size of the chamber, which is considerably larger than that in Saskatchewan, and the fact that Saskatchewan had their lighting right in the middle and we are restricted from that because of the chandeliers.

Mr. Mitchinson: In this tape we have prepared we have split in some shots from the Saskatchewan House, and you will notice the quality is much inferior there than in here. The glare and the shadows from the indirect lighting are quite noticeable.

Mr. Applin: The architects have also reviewed the proposal to place cameras over the doorways and have come up with some drawings that indicate how they would blend that aperture into the molding of the existing doorways. They are proposing to raise the cornice, form a new transom and box it in with moulding that is similar to what is there at present. They are also proposing to paint the enclosure black so it is of minimum visual impact.

The fifth camera, in the Speaker's gallery, will be mounted in the centre of the gallery in a small raised, boxlike enclosure,

which will be surrounded by wood panelling. We have been able to design it such that the fifth camera will not negate the use of that position for a commercial TV camera. We can mount a commercial TV camera on top of the box that contains the Speaker's camera so we do not lose a position by doing that.

I would like to show you how it is going to be done, both of these, with these architectural drawings. This shows how we propose to raise the cornice and form the new transom. There is the camera sitting in there, one there and one there. I can show it to you in another section. The box will show in the members' lounge but will be boxed in. There is the lens, the camera sitting in there like that. In the third view, the Speaker's camera would sit up in here surrounded by wood panelling. You can see the enlarged transom here.

The last time we met to discuss this, we were talking about a solution to the position of the Hansard console where we were proposing an opera box over the front, right in the centre of the Speaker's gallery. We went back to the drawing board on that one based on several comments, comments from this committee and from the Hansard staff, and have come up with an alternative that we think meets everyone's requirements.

Instead of putting the Hansard console in an opera box extension in the centre of the gallery, we are proposing to place it in a curved extension at the east end of the Speaker's gallery. We would match that curved extension with a similar one on the west end of the gallery where the Hansard supervisor or transcriber would sit. This proposal has been made after considerable discussion with Mr. Brannan of the Hansard staff and he concurs that position for his console operator is the most appropriate.

12:30 p.m.

The Vice-Chairman: Do you have a drawing?

Mr. Applin: Yes, I will show you a drawing. Unfortunately, this only shows you the west end one. Do you see the curved extension here? There will be a similar one on the east end where the Hansard console operator would be.

The Vice-Chairman: There would be a Hansard staff person there or a camera?

Mr. Applin: A Hansard staff person here operating the console on the east side of the gallery and the supervisor for Hansard or the transcriber on the west side. It leaves the total Speaker's gallery available for commercial television cameras.

Mr. Morin: It adds a little more space, more room, more floor space.

Mr. Applin: Just a little bit on either end.

Mr. Mitchinson: It improves the seating slightly in the seating sections of the Speaker's gallery. It does not have any impact on the area that is reserved for the press.

Mr. Applin: We also talked at some length about the fact that the existing acoustical absorptive material on the walls of the House has been painted over so it does not work any more. We are proposing to add a considerable amount of acoustic material to segments of the wall to bring the sound quality up to broadcast standard. The slide shows where we are intending to place this absorptive material. Let me show it to you on the diagrams. It is probably easier.

Mr. Mitchinson: The material itself will just look like the wall. It does not have any visual impact.

Mr. Applin: This is the north wall.

Mr. Mitchinson: You are looking at the Speakers' gallery.

Mr. Applin: We will have acoustical material here, here, here and here. This is the east wall. We will also have acoustical material all the way along here, here and here, here and here.

We are also going to make improvements to the quality of sound in the chamber by adding better sound reinforcement both on the floor and in the galleries. We will be increasing the size and the quality of the speaker in each member's desk and providing volume control on the output to earphones. We are putting a series of small speakers in the rails of the upper galleries to push sound back into the galleries. In the visitors' gallery we are going to supplement those with small speakers mounted on the inside of the central front piers. In the areas below the press and Speaker's galleries, under the members' galleries there, we are going to put inconspicuous speakers in the ceilings to reinforce the sound to those areas of the House. Maybe I can show those on the diagram.

Mr. Morin: Do you think you can take into consideration the area right behind the Speaker's chair? There are speakers there that are not functioning.

Mr. Applin: That is correct.

Mr. Mitchinson: Those will be replaced.

Mr. Applin: We are replacing those. If I may show you where the ceiling speakers will go, this is looking at the opposite end from the Speaker's chair, but we are putting ceiling speakers up in here and the same at the other end on either side of the Speaker's chair.

The Vice-Chairman: Who is going to control the volume for the service?

Mr. Applin: The volume will be essentially preset.

The Vice-Chairman: When Mr. Martel gets up to speak, he will be heard a lot easier than if a different member gets up to speak.

Mr. Applin: There are automatic levelling devices to ensure--

The Vice-Chairman: You will want to hold your ears, though.

Mr. Martel: What about farmer Jack?

The Vice-Chairman: That is a valid point. Mr. Martel's point is about the Minister of Agriculture and Food (Mr. Riddell), who speaks very loudly. He could probably be heard in the whole building without any equipment whatsoever to enhance the loudness of his voice. What are we going to do to ensure that it is comfortable sitting there?

Mr. Mitchinson: The system is flexible enough to accommodate both providing more and--

The Vice-Chairman: Who is going to manage it? Who is going to decide that he should turn the speakers down or turn them up?

Mr. Mitchinson: I guess it would be a technical decision made by the technical staff.

Mr. Applin: In the TV unit. There will be the capacity for monitoring the audio signal and varying it. Some of this is automatic in the sense that you can have automatic levelling on some of these speaker systems, but there will be a manual override available in the control room.

The Vice-Chairman: That person is going to have two jobs then. He is going to have to look after the video and possibly the sound.

Mr. Mitchinson: There is definitely an audio element to the technical requirement.

The Vice-Chairman: It does concern me, and I am not sure your answer is going to take care of the problem, because there are not only Mr. Martel, Mr. Riddell and other members; sometimes I speak too loud myself. I can assure you it would be very uncomfortable sitting there for a couple of hours listening to speeches when someone's voice is louder than it should be as far as being able to transmit the message is concerned.

Mr. Bossy: There are not many seats there in the ends. It is possible for us to put earphones right into the chairs, because special guests normally sit there. That is done in other places where I have been. The regular galleries do not have those, but the seats down below are provided with the type where you have the earphone and control. You do not have to worry about the speakers up there at all if you put it down in here with an earplug.

Mr. Applin: We are currently looking at this whole issue of individual sound reinforcement in the light of the issue for interpretation into both languages.

There is a system--we have not finalized it yet and it is still very preliminary--whereby you can get a handheld transceiver

that you press to your ear, or you can put something in your shirt pocket and plug an earpiece into your ear. It acts like an AM radio that picks up from the signal going through the House.

The problem with the one in the chair is really equipment, wires or leads running around, particularly in the galleries where people might trip over them. Also, getting by people on bench seats is a problem.

Mr. Bossy: Why would that be a problem here? It is not a problem in the House of Commons.

Mr. Mitchinson: We will raise that with our technical people as a possibility.

Mr. Bossy: They can also switch English to French and French to English.

Mr. Applin: But they have individual chairs in the House of Commons galleries and we have bench seating in our galleries. We are looking at that issue.

Mr. Mitchinson: We will certainly raise your concern with our technical person, along with Mr. Mancini's concern about perhaps being too loud at times. We will draw those to their attention.

Mr. Warner: You might look at some cordless receivers. They use those in committees in the House of Commons. They are preferable in terms of the wiring and so on. Use the cordless ones.

Interjection: Then you have to sign them in and--

Mr. Warner: They can be issued to visitors--

Mr. Bossy: There is more that would walk out the door than we could afford to buy.

Mr. Applin: We are proposing to convert the three existing rooms directly behind the Speaker's gallery into a control room for the TV unit, and we are proposing to place a large window in the room so the operations of the room can be viewed from the corridor. It will provide a nice contrast between the history of the building and the technology behind the window.

12:40 p.m.

The Vice-Chairman: What are those rooms?

Mr. Applin: Hansard rooms. Hansard is being relocated. The architects have also reviewed the reseating arrangement and have made some suggestion for improvement which will improve the air flow through the chamber. I detailed them there.

Lastly, we have reviewed these changes with the Ontario fire marshal and, in general, the design concept has been well received. We have also discussed the architectural amendments with the heritage branch of the Ministry of Citizenship and Culture,

and they have been well received as well. We have checked in with both those bodies who have some interest in what we are doing in the chamber.

That concludes my presentation.

Mr. Warner: Noting the time, I have one question. Can we be assured that the switch will be flipped as of April 1, assuming that the House, after proroguing, comes back for a new sitting on or about the beginning of April, so when that occurs, many of the good people of Ontario will actually be able to see a picture on their screen?

Mr. Mitchinson: This issue was raised at the last meeting of the Board of Internal Economy. The instructions we received at the time were that the committee would be asked to input their views on the spring cutover and the project team would formulate our views as well and present them to the board. From our perspective, there are many impediments to a spring broadcast.

Mr. Warner: I do not want to be provocative, but when we started into this project, I think our objective was made fairly clear. Many of us thought that the test procedure would be concluded in November and that probably in January or February we could start some televising.

We know now, because Rogers Cable and others have carried material a lot, that we can televise it. There may some aspects of the total project that require refinement but unless I am mistaken, the committee's message has been and remains that we want live television come the spring. Barring some disaster, people in Ontario should have the opportunity to see this place in action as of the beginning of April.

I do not think I am unreasonable. If there are modifications that need to be made after we have started, that is understandable, but come the beginning of the session in April, it is all systems go and we are going to see television. I do not know if someone misunderstood the message or the Board of Internal Economy somehow got the message mixed up, but the message was very clear from this committee starting back last fall. In fact, earlier than that in the summer when we looked at Regina and Ottawa. From then on we had a certain timetable and we have attempted to communicate it. I hope there is no misunderstanding.

Mr. Mitchinson: I do not think it is a question of a misunderstanding. We have certainly understood the intention of the committee all along. Nothing you saw today can be in place on April 1. It is physically impossible to do in the chamber and it is physically impossible to acquire the equipment in that time frame.

There are some issues around distribution that we are looking into right now such as whether there are any regulatory problems associated with distributing the signal. We are in the process of applying for a broadcast licence with the Canadian Radio-television and Telecommunications Commission in Ottawa.

Mr. Warner: When was our committee's report passed?

Clerk of the Committee: The first week the House was back in October.

Mr. Warner: In October. That is six months or half a year. I am not a technical expert. I have watched your presentation. I am very impressed with the consulting firm that have done the work. They seem to know what they are doing. I am astounded that a half a year later you are telling me that nothing that we have seen today will be in place six months after we made a determination as to what we wanted to happen. I cannot believe that.

Mr. Mitchinson: We wanted it to be in place as fast as you wanted it to be in place. We have found that the lead times on equipment purchases, in some instances, are five months after a contract award before equipment can be delivered. The amount of time that is required to do renovations in the chamber cannot be done in that kind of a window. It requires a large window. If we were not dealing with the House schedule, we would not be talking about next October for a cutover. You have to have a certain window of opportunity in order to do the work to get it in, and it does not exist.

Mr. Warner: Is there nothing of a temporary nature which could be put in so we have a live broadcast?

Mr. Mitchinson: Perhaps something along the lines of what was done in the test could be put in with the existing lighting system, the existing audio system and manually controlled cameras. The only issue that has to be resolved is the distribution ramifications, that is, licensing, etc.

Mr. Warner: That is a point well taken. From my point of view, and other committee members may have a different perspective on this, but I gather from your drift that you are suggesting that it will be October before we are ready to be operational.

Mr. Mitchinson: That is right.

Mr. Warner: That is a full year after the committee completed its report. I suggest, with all due respect, that a detailed plan B be made available as quickly as possible, so there is live broadcasting on a temporary basis, starting subject to the CRTC deliberations in April.

That is my opinion as to what has to happen, because we do not have a lot of flexibility in this. We were given a task. The House told us to do something, and we have an obligation to do it. I do not think the other members are going to take kindly to figuring that a year after we passed our report, we are not ready to go. I suggest that a detailed plan B be drafted.

The Vice-Chairman: Mr. Warner, you have made your points very forcefully.

Mr. Warner: Sorry. I did not mean to get so upset. I have been close to this project and I am disturbed.

The Vice-Chairman: The people who are here understand your views very clearly. The committee wants it done as soon as possible. The gentlemen in front of us today realize that, and I am sure they are working towards that end.

I want to join Mr. Warner in saying we appreciate the presentation you have made today. We feel that what has been done up to this time has been excellent--the work that has been done and the co-operation. I say this directly to Mr. Applin, too. We appreciate what has been done.

I note that there is not a quorum in the committee at present. I also note that it is 12:50 p.m.

Mr. Bossy: There are two parties here.

The Vice-Chairman: Yes, there are two parties here. Let us take five minutes to wrap it up.

12:50 p.m.

Mr. Bossy: I will be very brief. With all due respect to Mr. Warner's comments herein, I feel we should proceed quickly, but I also recognize the fact that the Legislature is sitting at present and has sat since January 6. That was not anticipated because normally they would break until March. I also recognize the type of work that needs to be done, the seating, which is one of the areas that requires the whole disarray of the Legislature to do it properly, the wiring, all these things.

We will be lucky, even with all the things falling into place properly, if we can throw the switch when we come back in September. I personally know what you run into with construction, and remodelling is much worse than building new. What they may run into here is going to be something else.

I want to add one short comment as far as the Board of Internal Economy is concerned. We do not want to leave any doubts here. They are totally in favour, and that has been recognized. They are not an obstruction to going ahead with this, although the implication is that they have been. Certain things must come to pass before other things can proceed. We have to have patience.

We are on stream as far as the government proceeding with the recommendations of this committee report is concerned. It has been approved and discussed in the House, which is more than had ever been done before.

Mr. Morin: With the money we are spending, I feel we should not rush into this. As far as leasing equipment for April, it may no longer be the state-of-the-art when we are purchasing equipment in October. Twelve million dollars is a lot of moolah, an awful lot of money. Let us get good value for that money and wait two or three months. At least when you turn on the switch, you have something to be very proud of, something excellent.

There is no point in rushing these people, I find, unless there are certain limits, but let us make sure we have everything

perfect. By bringing in television, we have discovered all kinds of new problems. This is not their fault; it is nobody's fault. It is an old building. We are spending a lot of money. Let us have a good return for our investment.

Mr. Warner: Mr. Morin, I understand that and appreciate that. I, too, want the best quality possible. I have no doubt that, when we have completed the project, we will have the best there is in Canada or, perhaps, in North America. We will be very proud of the chamber and of what we see on television.

I am concerned about our initial goal, which was televising, first in the fall, then in the winter, then in the spring and now probably next fall. I am suggesting we are short of time. These gentlemen have to come back on another occasion to deal with the hearing impaired aspect and to see the tape. Perhaps the committee needs to discuss whether to wait until October or to ask for a plan B to start in April.

I am suggesting that those three items be dealt with at a meeting of this committee. We have booked in next Thursday. I understand that. What we have to do, in conjunction with the clerk, is to find another time.

Mr. Bossy: We were the committee that said--

The Vice-Chairman: Order. Thank you, Mr. Bossy. I want to say that the people before us understand our impatience, if I can use that word.

Mr. Mitchinson: Could I make one comment on it? We would be prepared, when we bring you our report on the hearing impaired, to put to you a pros and cons position and identify what costs would be involved in going for it, what possible benefits we could determine technically from it and the negative side to it as well.

The philosophy behind our concern is that we feel it is very important that, when this signal finally goes out to the public, it is a quality signal we are producing. When we cannot produce it with the technology that we are ultimately going to have, we are a little bit concerned about that. That is the only hesitation we have. We will do that for you in two weeks or whenever.

The Vice-Chairman: In my view, the way things are proceeding after listening to everybody today, we have done the best we have been able to do. That is the feeling of the committee, and I believe even Mr. Warner feels that way, even though we might not have it on track as quickly as possible. From the comments you made, I do not think you believe there is any one--

Mr. Morin: It is his youth. He is impatient.

The Vice-Chairman: Yes, it is his youth. Members of the committee, seeing it is 12:55 p.m., we are going to adjourn. There is just one other matter on the agenda. I am to ask the committee if we wish to sit beyond 12 noon next Thursday in order to hear the witnesses who will appear before us, so we do not have to sit Thursday evening. Is that the wish of the members here?

Mr. Warner: Hold it. What kind of hours are you talking about?

The Vice-Chairman: From 10 a.m. to 1 p.m.

Clerk of the Committee: 1 p.m. or 1:15 p.m.

The Vice-Chairman: I see. No later than 1:15 p.m.

Mr. Warner: What about these matters? There are three items now.

The Vice-Chairman: I am going to leave that in the hands of the clerk, and he will check with our chairman.

Mr. Warner: Will he set up a time?

The Vice-Chairman: He will work with our chairman.

Mr. Warner: Okay. Next week, if possible, so we can--

The Vice-Chairman: I will let the clerk and the chairman decide. All members will be given advance notice, of course.

Thank you for your co-operation. The committee is adjourned.

The committee adjourned at 12:58 p.m.

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-P62

STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES, BOARDS
AND COMMISSIONS

APPOINTMENTS IN PUBLIC SECTOR:

MUNICIPAL POLICE AUTHORITIES
PROVINCIAL COUNCIL OF WOMEN OF ONTARIO
ONTARIO PUBLIC SERVICE EMPLOYEES UNION
ROBERT SLOAN
MALCOLM CAIRNDUFF
BRANTFORD ETHNOCULTUREFEST

THURSDAY, JANUARY 30, 1986



STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES,
BOARDS AND COMMISSIONS

CHAIRMAN: Breagh, M. J. (Oshawa NDP)
VICE-CHAIRMAN: Mancini, R. (Essex South L)
Bossy, M. L. (Chatham-Kent L)
Martel, E. W. (Sudbury East NDP)
McCaffrey, R. B. (Armourdale PC)
Morin, G. E., (Carleton East L)
Newman, B. (Windsor-Walkerville L)
Sterling, N. W. (Carleton-Grenville PC)
Treleaven, R. L., (Oxford PC)
Turner, J. M. (Peterborough PC)
Warner, D. W. (Scarborough-Ellesmere NDP)

Substitution:

Wiseman, D. J. (Lanark PC) for Mr. Turner

Also taking part:

Gillies, P. A. (Brantford PC)

Clerk: Forsyth, S.

Assistant Clerk: Decker, T.

Witnesses:

From the Municipal Police Authorities:

Cousineau, K., Executive Director

Dickson, W., Acting President

From the Provincial Council of Women of Ontario:

Kerkhoven, P. A., Chairman, Legislation

Sinclair, A., President

From the Ontario Public Services Employees Union:

Clancy, J., President

Usher, S., Director of Education and Campaigns

Sloan, R.

Cairnduff, M.

From Brantford Ethnoculturefest:

Bucchi, V., President

Fallis, N., Executive Director

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS
AND AGENCIES, BOARDS AND COMMISSIONSThursday, January 30, 1986

The committee met at 10:13 a.m. in room 228.

APPOINTMENTS IN PUBLIC SECTOR
(continued)

Mr. Chairman: We are going to continue this morning with hearings on appointments in the public sector. We have a long list of witnesses that want to appear before the committee this morning, so I urge us to expedite the matter if we can.

Mr. Martel: At some time today, can we discuss the matter of the recommendations that were apparently put forward at the end of last week's meeting. Maybe they were not recommendations, but the apparent decision that this could not be in place until next October.

Mr. Chairman: Yes. We have scheduled some time next week to do that. If there is time at the end of today's session, we will do it.

Mr. Martel: That is fine.

MUNICIPAL POLICE AUTHORITIES

Mr. Chairman: The first witnesses this morning are from the Municipal Police Authorities. We have Ken Cousineau, who is the executive director, and William Dickson, who is the acting president.

For the benefit of witnesses who appear before the committee, we have received your brief and have had a chance to peruse it. The normal process would be to offer you a chance to make some comments to the committee and take some questions from them. Please proceed.

Mr. Dickson: I would like to thank you for the opportunity to address you at this time. I do not know how many members of the committee have ever been down to sunny Sarasota, but if you walk toward their municipal building, there is a very large statue of what some people call modern art. As one walks toward it, one gets the indication that there are shapes there. These shapes are people with their arms wide and mouths wide open. The caption under the statue reads, "Is anybody listening?"

It is nice to know that in this cold Canadian winter about 1,800 miles north of that edifice, somebody is listening. We are pleased to have the opportunity to address you on that.

Mr. Wiseman: I have seen that statue.

Mr. Dickson: We have made two prior presentations to the two prior Solicitor Generals regarding our concerns with appointments to boards or commissions in Ontario. Unfortunately, these two gentlemen had to report to higher authority, and to date, I do not think any action has been taken on those recommendations.

I would like to give you a brief overview of the situation of police commissions in Ontario. For many years, police commissions remained quite stable. Appointments were made to the board through resignations or deaths on those commissions. As a result, the members who were on the board had the opportunity over those years to build up the expertise and the knowledge of the police community that we feel is very essential when becoming a member of board or commission.

Unfortunately, two years ago, the provincial government at that time began to invoke what someone called the six-year rule. In that, members of commissions who had sat on commissions for six years or more had their services terminated. As a result, you can recognize that a lot of the knowledge and expertise that had been built up on those commissions was lost at that time.

This year, through the provincial government again, those members who were appointed two years ago no longer sit on the boards. At the present time, we have a variety of boards with a great degree of new members appointed to them.

We feel that our brief is very explicit. I would like to point out and qualify that we are here to present our brief on behalf of appointments to boards and commissions of police in Ontario. We do not wish to address it to any other appointments other than that.

As pointed out in our brief, the policing budget for commissions in Ontario is \$760 million. It is second only to the budget provided for the boards of education. The provincial authority appoints 199 members to our 76 boards. These members are usually appointed. They are a cross-section of the community. They are usually businessmen, housewives, engineers, accountants. These people are appointed to boards of education or other advisory boards. They usually have a large professional staff who can guide these people through the familiarization process as to what the duties and responsibilities of that board are.

Unfortunately, in Ontario our police commissions to a great degree are made up of small forces and small commissions. As a result, many of the people who are appointed for the first time are saddled with the responsibility of dealing with budgets and budget control, labour relations and negotiations, disciplinary hearings and public hearings. The appointees to these boards are the staff and resource people of the commission.

In the area of negotiations, 90 per cent of our budgets usually consist of salaries, wages and benefits. In the negotiation aspect, it is very important. In many cases, an

inexperienced commission has been coerced, shall we say, by the police associations of Ontario to give away something that has a ripple effect right through the whole policing community.

To familiarize new appointees takes time and guidance by existing members, where they exist. In my own situation, our board for at least 15 years was very stable. The appointments to that board did not change much. In the past two years, we have had three political appointees and we now have three more. With an election this year, we have also had changes on our board through the election process.

Right now, our board consists of three brand-new provincial appointees, one council appointee with limited experience on the board, and myself. We are coming up to negotiations, etc. With that type of board, it is rather awkward. The new members have a great deal of pressure on them to become familiar quickly with the Police Act and all of the other aspects of policing.

Mr. Sterling: Which board is that?

Mr. Dickson: Niagara.

As explained in our brief, our concern is continuity. We feel appointees should be looked at by the contribution they can make and the skills and ability they can bring to a board. Appointments should be phased in so that the expertise of a board over the years is maintained.

Last Friday, the Municipal Police Authorities' executive met. For a while, we had a problem getting a quorum because of late appointees to the board who were also members of the Municipal Police Authorities. We did have a quorum. We addressed ourselves to the four questions that this committee was concerned with. Those were the legislative scrutiny of appointments, financial disclosure, security checks and minority representation.

It was the unanimous consideration of the board at that time that there should be a definite "no" on all of the four questions. To elaborate, under legislative scrutiny, we feel that it is not required. We feel it would be an abuse of parliamentary time. As far as we are concerned, it would suffice to have the names published in Hansard. We felt there is a sensitivity here where individuals eligible for appointment to municipal boards and commissions of police may be unwilling to have their names held up to public scrutiny and debate, given the limited benefits that accompany such appointments.

As far as financial disclosure is concerned, we feel this is totally unnecessary because those appointed to the municipal boards of commissioners of police are subject to the provisions of the Municipal Conflict of Interest Act and must divulge and refrain from participating in any discussion or vote on any matter in which they or their family could be deemed to have a pecuniary interest.

As far as security checks are concerned, we feel the present system of checks through the Canadian Police Information Centre is

sufficient to uncover any matters of a serious nature that may influence the ability of any individual to dispose of his responsibilities under the Police Act.

Regarding minority representation, given the nature of appointments that the Municipal Police Authorities is addressing its concerns to today, the organization believes that such appointments should be made on the basis of ability to fulfill the responsibilities placed on the position of a police commissioner.

I would like to thank the committee for listening to us. We are not a self-serving group. We are here to represent the same taxpayers who also sometimes wonder if anybody is listening. If there are any further deliberations that you or your committee might want, the executive of the Municipal Police Authorities are at your disposal.

Mr. Chairman: I have a couple of quick questions, and then some committee members have questions.

You said no to security checks.

10:20 a.m.

Mr. Dickson: That is right.

Mr. Chairman: That struck me as rather odd. For example, if someone applies for a job on a police force, there is a rather extensive security check. If police officers are subjected to that scrutiny, why would not members of a police commission be subjected to the same scrutiny?

Mr. Dickson: It was my understanding that the check the Canadian Police Information Centre did give was adequate for board members. I feel the duties and responsibilities of members of the board are somewhat different from that of a police officer.

Mr. Chairman: I just sensed a bit of a double standard there.

Mr. Dickson: No.

Mr. Chairman: In terms of minority groups, one of the things many communities are now facing, and it is particularly apparent in a large urban centre like Metro, is a rather healthy outcry from the population at large that there are problems in race relations, problems in discrimination, problems in officers on police forces not understanding different customs in the ethnic communities.

It seems to me there would be a decided advantage in the police commission at least attempting to see that the commission is reasonably representative of the racial mix of that community. It seems odd again that you would say no to that. Could you fill us in a little on the background of that?

Mr. Dickson: I think the specific situation we are talking about in my observation applies particularly to one

municipality, and that is Toronto. We do not have that problem in Niagara.

It has been my understanding also that there was a conference held in Vancouver and there was a conference held in St. John with the chiefs of police last August that dealt with the multicultural aspect and the concept of the minority being represented, and coming out of both those conferences was a discussion that it was a matter of not lowering the standard, that those appointed must--

Mr. Mancini: Mr. Chairman, on a point of order: I object strenuously that you would even think that there are not enough competent people from the minority communities--

Mr. Dickson: I did not say that. Let us be very clear about that.

Mr. Mancini: We can meet any standards you set down.

Interjections.

Mr. Dickson: I am sorry, Mr. Chairman. I am not arguing--

Mr. Mancini: Never mind. I will have something to say about that.

Mr. Wiseman: You will never get to cabinet that way.

Mr. Mancini: I was never fired from the cabinet either.

Mr. Chairman: What I said was settle down. Shut up is the polite way to say it.

Mr. Martel: --in your ear.

Mr. Treleaven: Are you speaking to Remo?

Mr. Martel: I am speaking to you.

Mr. Treleaven: Why? I have not said anything at all.

Mr. Martel: Was that you or was that Wiseman?

Mr. Treleaven: It was somebody else. You have bad eye sight as well as bad hearing.

Mr. Martel: Whoever it was--

Mr. Bossy: Mr. Chairman.

Mr. Chairman: No. I am not listening to anybody while the rabble continues. Shut up.

Mr. Bossy: On a point of order, Mr. Chairman: I think even though the remarks that were made are very sensitive, the

fact was that the gentleman was not allowed to continue and explain what he meant by what he was saying.

Mr. Cousineau: We are not suggesting for a moment that by appointing minority groups to boards that you would be lowering the abilities or the standard. What we are suggesting is that those appointments should be made so as not to lower the standard that currently exists, whether that be appointments from minority groups or any other group. That comment was not meant to suggest minority groups would necessarily lower any standard.

Mr. Dickson: I think that explains our position quite well, Mr. Chairman.

Mr. Chairman: I have one other small question. You have a task force or standing committee on equipment, as an example of work your association would do. My local police force, for example, has recently instituted a policy of putting 12-gauge shotguns in cruisers and will now phase them in over a number of months, something that no one else to my knowledge has made a practice in Ontario.

Did that kind of a recommendation come from your standing committee on equipment. It particularly seems odd to me because in the discussions I have seen, a 12-gauge shotgun in the 1860s was considered to be state of the art firepower. These days, people are not talking about shotguns, they are talking about Uzis and automatic weapons and things like that.

Where do those kinds of recommendations come from? From a local commission or from something like your standing committee on equipment?

Mr. Cousineau: The standing committee on equipment is a joint committee of representatives from the Ontario Police Commission, our organization and the Police Association of Ontario. They deal with all manner of equipment from cars to radios to firearms and make recommendations, but the type of situation you have in Durham region was a matter of negotiations at the local level between the board and the police association.

Mr. Chairman: Okay. Did things like the new holster for police officers get run through your committee?

Mr. Cousineau: Yes.

Mr. Chairman: So you kind of review on an associations basis what might be a common position.

Mr. Cousineau: It is an advisory group that they run these things by and it makes recommendations back to the Ontario Police Commission.

Mr. Dickson: Referring to your question, Mr. Chairman, the question of shotguns, I believe, was a negotiated item between the commission and the police association at that time.

Mr. Chairman: To pursue it for a moment then, your

advisory committee does not put out a list of approved equipment. You make comments on specific items.

Mr. Dickson: That is right.

Mr. Chairman: Mr. Mancini?

Mr. Mancini: Yes. Just a couple of comments and some questions.

First, in regard to the police commissions, I want to tell the gentlemen before us, while I understand their concern for stability, in the constituency that I represent there are three police commissions. Having reviewed the appointments over the years made to these commissions, yes, we have had stability. We have had continual appointments of high profile Conservatives in the area. Now if you consider that stability, then you and I are going to have to part ways. Just to give you an example, in one of the--

Mr. Wiseman: What are you doing now?

Mr. Mancini: Just hang on.

Mr. Chairman: Order. I am going to lay it down now. We have a long morning ahead of us. I am not about to tolerate interjections and squabbling back and forth. Those who want to interject are going to be here when this thing ends at about 1:15 p.m. if I have to chain them to a chair; so withhold yourselves.

Mr. Treleaven: Boy, did you ever get up grouchy this morning.

Mr. Chairman: You bet, and let me forewarn you, I am very grouchy. I spent two hours on the parkway. I am in a terrible mood.

Mr. Mancini: In one of the police commissions, we had the appointment of a high profile Conservative from a municipality outside the jurisdiction of the police commission, which I found to be unfair and unreasonable. On another commission, we had the appointment of a former Conservative candidate who was appointed for three years. He moved out of the community and into Windsor, and has been there for the past two or three or years and he was reappointed.

If that is the kind of continuity you are talking about, you are not going to get any agreement from me. In the police commissions in my constituency that I reviewed, we have no women and not a clear representative of the minority groups, and we have many capable people from those communities who can do a hell of a good job on our police commissions in our areas.

I intend, whether I get into the cabinet or not, to recommend to this government the appointment of women and the appointment of competent people from the minority communities. Do you think, sir, that we should be appointing people to these

commissions in the small municipalities I represent who live outside of the jurisdictions of that municipality?

Mr. Dickson: If you want my own, of the top of my head, gut reaction, I would say no.

Mr. Mancini: Good.

Mr. Dickson: I think that is probably why this committee is deliberating because of the problems in the past and some of the appointments to the commissions, and I concur with that.

Mr. Cousineau: As an example of a situation where that might occur, we do support the appointment of judges to police commissions because of the valuable service and resource they can be. We have always supported that.

Mr. Mancini: It was a policy of the last government to discontinue the appointment of judges and I have to agree with them. I think the police commissions have the ability to call on their own counsel, and in some cases lawyers are appointed to police commissions, and I think they do bring some valuable service.

I just want to tell you in as clear a way as I possibly can, the appointments that have been made in the past, in my view--I am not talking about any specific individual--have been limited to a small, narrow select group.

10:30 a.m.

If this government accomplishes anything, one of the things I believe we are committed to is breaking that down and ensuring that people from a broad sector of the community have a chance to be appointed.

That is not saying Conservatives will not be appointed because I have recommended a couple of Conservatives to be appointed and I have recommended a couple of them to be re-appointed. I have recommended a couple of them to be re-appointed based on my discussions with the municipal councils and on the competence of these people who have been chosen.

As you said earlier, this is a very sensitive subject, and when you say in a blanket-type of way that, "Yes, we voted against the appointments of minority groups," for anyone even to consider that we would appoint anyone from a minority group who was not capable is really something we have to take offense at. In no way, in my responsibilities to the community, especially for something as important as a police commission, would I want to nominate and ask the government to appoint anyone who was not capable no matter who that person was.

However, I want to tell you there are a great number of people in the community I represent who have not been happy with the appointments to the police commission. I can point to some very severe examples of problems that have been caused because of the situation that has persisted over the past number of years,

when the appointments have been limited to this very narrow group of people who seem to get appointed and re-appointed and have their friends appointed; all you had to do was call the president of the local Conservative association. I just want to make it clear exactly how I feel.

Mr. Warner: I want to go to go back to the question about security. I should like a little bit more information. You mentioned something about a security check through the Canadian Police Information--

Mr. Dickson: It is called the Canadian Police Information Centre.

Mr. Warner: What happens? If I am appointed to a police commission, is there automatically a security check done on me?

Mr. Dickson: Yes, that is our understanding.

Mr. Warner: Is this done with or without my knowledge?

Mr. Dickson: I would say it is done primarily--in my own situation, I do not know how it affects me because I am an appointed member of council, but it is my understanding it is done through the Royal Canadian Mounted Police.

Mr. Warner: Which means it is probably done without my knowledge. Am I informed at the end of the security check that a security check was done on me?

Mr. Dickson: I do not think I am qualified to answer that question on the basis I have never had that happen and I could not give you a qualified "yes" or a qualified "no" on it.

Mr. Warner: To your knowledge, have any individuals subsequently had their position removed because of the security check?

Mr. Dickson: To my knowledge, no.

Mr. Warner: Do you know who receives the information from the security check?

Mr. Dickson: I would say that somewhere along the line the organization or the recommendation being made would be to the cabinet, I understand, but I am only guessing.

Mr. Cousineau: I believe it is done through the Ontario Police Commission.

Mr. Treleaven: It works its way through to the Solicitor General (Mr. Keyes).

Mr. Dickson: Which is the point I was trying to make. It goes to the organization that clears the appointments.

Mr. Warner: I do not know if you can answer this. There are a lot of appointments. Can you tell me, in general, if you

take the total number of appointments on the police commissions throughout the province, would it be fair to say the vast majority of individuals serving on a commission are male? Would that be true?

Mr. Dickson: I think that would be fair to say.

Mr. Warner: Anglo-Saxon?

Mr. Dickson: I could not answer that.

Mr. Dickson: If I look at a cross-section of who we have at our spring and fall seminars, at which members of all the commissions of Ontario do gather, I would say that in essence it is just a good cross-section of the province. We have a lot of males. I do not know what you would call white Anglo-Saxon Protestant nowadays but I would say there are all groups represented, primarily.

Mr. Warner: Visible minorities?

Mr. Dickson: Some, yes.

Mr. Warner: But not--

Mr. Dickson: Not predominantly, no.

Mr. Warner: Not an accurate reflection of the percentage of non-whites who live in Ontario.

You have probably already sensed from an earlier comment, that the committee is not terribly pleased with the unfortunate remark that was made. I think it is fair to say that, by and large, the appointments in all sectors--not just the police commission--but right across the board, have been without regard to visible minorities in this province. The committee is of a mind, generally, that we want to correct that situation in as fair a way as possible and to make sure that there is a proper representation of women, of disabled people, of ethnic minorities and of all economic backgrounds as well and to try to de-emphasize the partisan political appointments that are made.

Therefore, in that context, the remark that was made triggers an emotional response from the members. I hope you can appreciate that. To be very candid with you, you are proposing that essentially the status quo be maintained. It is my considered view that is not sufficient in the 1980s and 1990s and we have to make some progressive changes.

Mr. Chairman: Mr. Dickson, did you want to make a point?

Mr. Dickson: Yes. In the presentation that we have made, I do not think that we have indicated--and I would like some information as to where we have indicated that--that we wished the status quo to remain. Our concern and thrust has been that appointees to police commissions be those people in the community who can make the greatest contribution to the board with their expertise and knowledge, whether from the private sector, which

helps the board make its deliberations over the police community. That is basically what we are saying.

The status quo in the last two years has decimated police commissions. We are not satisfied with the status quo either. That is why we are here, to give you the information as to what a police authority is and what its duties and responsibilities are, so that when you make your final decision, it will be based on the facts that have been presented to you.

Mr. Cousineau: Just to expand on that, once the appointments have been made and the requirements of the board have been met, it is important from that point on to stage any new appointments so you do not have a situation such as exists in Niagara, where you have four or five commissioners--three of them with no experience whatsoever and one with less than one year's experience. That is where we run into problems. We are faced with sitting down with the police association who have the money, experience and expertise that their organization can muster and we are negotiating with a group of people who have no experience whatsoever. It does not bode well for the taxpayer.

Mr. Martel: I only have a couple of questions. I have always been bothered by the fact that if you have a five-man commission, the provincial government appoints three.

Mr. Dickson: No, on a three-man board they will appoint two.

Mr. Martel: The municipality or the area will appoint two.

Mr. Dickson: No, there are three-man boards now where the province will appoint two out of the three.

Mr. Martel: That is right, with the province still retaining control.

Mr. Dickson: Right.

Mr. Martel: So any pretence of people controlling the destiny of the police commission in their own community is just a facade, because in the final analysis, three out of five are appointed by the province and in a dispute between the province and an area, the province will prevail. It is much like the teachers' superannuation commission--six out of 11 are appointed by the province. Do you think that should be changed?

11:40 a.m.

Mr. Dickson: No, and I am basing it on my own eight years of experience in the four commissions I have worked with. If we are representative of what happens across the province, the appointees we have been getting are representative of the community itself, the police community. There is no situation of them and us when we meet as a board. Five members are representative of the board and we carry the board's thinking through in our deliberations.

Basically the five members, regardless of how they came to be appointed to the board, work together as a unit for the betterment of the community, really. There are no provincial strong feelings or municipal strong feelings. That has been our experience over eight years.

Mr. Martel: My friends across the way shake their heads, but I have some strong sense when I see commissions that have been appointed in Sudbury, most of whom I know are fine people but with one qualification, and I will not even bother to mention what it was, in order to get on the commission over the years. One tries to break that stranglehold by seeing other people appointed.

The other thing I would like to address is, I come from a community that has 35 to 40 ethnic groups. My teaching background tells me that it does not matter whether you are an immigrant or a Canadian by birth--there is as much confidence in immigrants as there ever was or ever will be as those of us who are born in Canada. So, it was an unfortunate decision made by whoever voted to keep it the way it was. It is really an unfortunate situation, considering the history of Canada, since most of us, if we trace back far enough, our origins are outside of Canada, except the first citizens of Canada.

I think you saw the nerve it touched this morning. If that is an attitude that is still prevalent in police--small groups, whatever they might be--it really touched a nerve. You just saw this place really vibrate, very quickly.

Come to a community like mine where you have Finns, Ukrainians, Italians, French and Chinese--you name it, we have them in Sudbury. You have to respect them. You have to have them represented in as many areas as possible, and yet Sudbury is probably one of the best areas in the world for people getting along together.

I am sure others will say the same thing, but I do not know any other community where people get along as well, despite the great mix and the effort to retain one's cultural identity in Sudbury. It is worked on very carefully. We take great pride in it and yet, at the same time, they are Canadian--there is no doubt about it--but they retain the best from their own culture, which we want them to do.

It is just an unfortunate statement. Maybe they should look at it again next year.

Mr. Chairman: Mr. Dickson, you wanted to respond?

Mr. Dickson: I would like to try and correct a misconception that some of the members of the committee may have received from that earlier remark, and that is simply that we have not and never have made a statement suggesting that minority groups not be appointed. What we are suggesting is that whoever is appointed have the abilities the local commission needs to function. We are not suggesting that minority groups do not have those abilities and that they should not be appointed. All we are

saying is that whoever is appointed--be they women, any visible minorities, whites, whoever--have the abilities that are required to operate that commission.

Mr. Martel: What worries me is if you had added that the same qualifications applied for people who are not from the minorities, I would accept that as an argument, but it has to apply to everyone. Over the years, I have seen people on police commissions, some who did not know their ear from their elbow and I did not understand why they were on a police commission, quite frankly. Forget the visible minority groups or the women and just simply say that anyone appointed to any commission must have ability, then I would buy it. The overtone is there, unfortunately. It may not be deliberately meant.

Mr. Dickson: I would like to apologize for any inference that was taken by my remarks, but Mr. Cousineau has stated very emphatically the position of the members of the Police Authorities of Ontario and he has stated it quite well. If there has been any error on my part, or inflection, then I apologize, but that is not our position. We have stated it very emphatically in our brief. Our brief has been presented to you, outlining the duties and responsibilities that are involved in municipal police authorities.

It is a somewhat unique board, we feel, because of the restrictions placed on it by the Police Act, in that your movement is somewhat limited. It is not like your municipal council where sometime a motion can dictate which way you are going to go. It is a very rigid form, governed by statute, and that is what we are involved with.

If you are going to appoint, we can tell you the why; you people are going to have to work out the how. We are prepared to accept that. All we are saying is listen to us, go over our briefs, those are things that make good police commissioners and anyone whom you wish to appoint, who this committee feels can go on a commission, should be appointed. That is all we are saying.

Mr. Sterling: As a member of the former government, I cannot help but respond to Mr. Mancini's allegations. Quite frankly, there is a lot of bunk involved in a lot of it.

In my own riding, for instance, I have three police commissions in very small forces. Quite frankly, I do not know the politics of the people involved because I have been asked whether or not John Jones was a good person. I would ask the people in the community, the mayor, the clerk and other people, whether or not John Jones was appointed and whether he should be reappointed because he was attending the meetings and taking an interest in what he was doing, etc.

In terms of my own situation, and I am sure in many other areas, nonpolitical qualifications were primary. Probably in certain areas there were political considerations. Also, from everything I have heard, there are still political considerations involved. That is one of the problems you are facing with continuity.

You do not have a government that is throwing out the old system; you have a government that is adopting the old system. That has been most recently exhibited by the Brock University professor, a known Liberal in the Niagara region who was appointed to that police commission. Presumably, a Conservative was thrown off. So, we do not have a change and therefore I hope that as a result of your visit here this morning, and as a result of our deliberations, that a change will occur. I do not care whether a person is a Conservative, a Liberal, an New Democrat, black, white, handicapped or not handicapped, the qualification should be the best person in the community who wants the position should get it. That is the way it should be.

You have not suggested to us how we can achieve that. You have suggested to us that you do not want legislative scrutiny because you think it would be hard in terms of the time that a committee would have to consider it. Maybe you should suggest--I do not know if you could suggest to us--after you go away from the committee, what kind of scrutiny would be apropos to deal with the appointment and how people should be sought for the appointment, be it through an advertisement or something of that nature.

Our party is interested in finding the solutions. We do not think the old system was perfect by any stretch of the imagination either and we are quite willing and have changed our attitudes since May 2 and will continue to do so.

In relation to Mr. Mancini's charge that it was our former government's policy that we did not want judges on the commission, nothing could be further from the truth. We had problems in Grenville county, which I represent, and Lanark county, which Mr. Wiseman represents, in having judges serve on a number of police commissions. It was not our desire to have them off. In fact, we wanted as many county court judges as we could have on police commissions, but the fact of the matter was there was not the time nor the interest on the part of some of our county court judges to take an active role in it. Now, that is a shame, but that is what happened.

10:50 a.m.

The county court judges were not appointed by the provincial government in those circumstances either, so no pressure could be brought upon them. It was the Liberal government in Ottawa that was appointing those county court judges.

I am concerned about the continuity and what is going on in the province today with regard to the appointment of police commissioners. A person of the calibre of Sid Handleman, who used to be a minister of the crown here, was recently elected as the chairman of the Nepean city police commission, a city of some 80,000 people. He has had indications that he will not be reappointed to that commission, I presume because he is a known Conservative. He was a Conservative member here, but I doubt that anybody in this committee who had experience with Sid would challenge his competence to handle such a position.

I might add that those are not high-paying positions. I do

not know what the stipend is in the city of Nepean, but I think it is \$5,000 or something of that nature, which is not a lot of pay for the amount of work and responsibility involved and the number of meetings they go to. We are still getting political influence in terms of these appointments and if this government would do what it says it is going to do, then we in this party will be fully supportive to those kinds of changes.

Mr. Chairman: Is there a question in here anywhere?

Mr. Sterling: What I want to know is how do we get to these people? How do we cut away that political influence?

Mr. Dickson: As I said, we did present you with why we felt appointments should be made such as they are. The how? We are quite prepared to go back to our executive, which represents a cross-section of Ontario, and see if we can work out a model, which we will be only too glad to present to you, of how possibly these appointments could take place so that the best person in the community is appointed to the police commission.

Mr. Chairman: That might be very useful.

Mr. Treleaven: Two things, very briefly, on that question of judges no longer sitting on police commissions. As a person who went on a police commission, replacing the local county court judge, I believe at the time it was the philosophy that the county court judges were uncomfortable with being on a police commission as an employer of the policemen. They would then be going back in court the next afternoon and having to weigh the evidence of their employee, the police officer, and some other witness when it got into criminal matters--and civil matters for that matter, but basically the criminal.

There was a feeling of a bit of a credibility problem, of them putting more weight on their own employee with whom they deal on a regular yearly basis as against other witnesses. I think the judges were uncomfortable.

The next point is this question of investigations into the backgrounds of people on police commissions. You seem to think that the Canadian Police Information Centre is good enough or that a lower standard be put on police commissioners than policemen in that same force. I would really like to know your rationale.

Let me throw out to you that some police commissions are blessed with handing out taxi and cartage licences and so on. Do you not think it is relevant to look sufficiently into the background of the commissioners to find out if they own shares in taxi companies or cartage companies or their wives or their sisters are involved in those industries? Do you not think that it should go further than CPIC, further than just whether they have had some impaired driving charges or a criminal record?

Mr. Dickson: In view of some of the concerns of your committee in that regard, once again, in my eight years' experience on police commissions it has never been a problem. I have never had commissioners come to me and say this and that

about a security check. I will profess to this committee, that is one thing that we, as boards and commissions, have never got entirely into. This was set up, it was there and it seemed to work well. There have been some questions raised today by the committee and we will also do some checking on that aspect of police commissions and will report back to this committee, if you so wish.

Mr. Treleaven: Just one supplementary thought; we have been to the United States and in some places they go crazy with the background checks, but it seems to me that there should be much more of a background check on an appointment to a board of commissioners of police than a public utilities commission board to run the sewage board, for example, or to run even Ontario Housing. I do think that the background of a police commissioner should be looked at a little more scrupulously than somebody running the local sewage plant or even the senior citizens apartment buildings.

Mr. Bossy: On a point of clarification: When was the last time that the public and the police have had the opportunity to make a presentation such as this to the procedural affairs committee?

Mr. Chairman: This is the first time in the history of the world.

Mr. Bossy: Then I just want to follow because there is the element of accusation, and I want to clear the air a little bit.

Mr. Chairman: You have not only cleared the air, you have cleared the room

Mr. Bossy: Someone has left here and what I am trying to get at is they are talking about the current government continuing the status quo as far as appointments are concerned. The reference was made that there is a continuation of the same.

I want to come back to where the gentleman made that sensitive remark and was not able to finish his remarks. I think that might have been cleared. We are all sensitive towards that point but I am sure that when he made the remark as far as the standard was concerned, I believe that word came in there, you did not want a lowering of the standard. That says something, that you are afraid the standard is fairly low. I interpret it that way, and you do not want it to get below that standard that was created. You want to contribute to a better standard and that takes in everybody. I am trying to clarify that in my mind.

I also wanted to get on the record the fact that this is the first time these kinds of hearings have been held and this is the thrust of the this new government, to open this up and really review the methods of appointments. It is good for the system, good for the province, and good for your organization, so that you can have that input. I am sure that whatever we can conclude in our report it will reflect that.

Mr. Chairman: Thank you. We want to thank you gentlemen

for appearing before us this morning. On a couple of occasions you have noted that it might be useful to have your association provide us with a little more information or background or reviews on how we might do certain things.

We would certainly offer to you the invitation, by means of letter or however you would like to do it, to provide us with any further thinking on matters that have been raised here. Thank you very much.

Mr. Dickson: Thank you very much, Mr. Chairman.

Mr. Warner: Before the next witness, I have a request of research. I wonder if John Eichmanis could prepare for us a note on what the present security check system is with respect to police commissions, how it functions, who gets notified, and who received the security information.

Mr. Chairman: Okay. We are only half an hour behind schedule this morning.

Mr. Martel: May I say something, Mr. Chairman? I want to be helpful, because I have sat in a lot of these things and when you schedule yourself this tight, you are asking for trouble. You cannot put six briefs into a two and half hour session and expect to get away with it. I suggest to you that this is going to occur over and over again and we might be better reducing by one and giving ourselves some time when a situation arises.

Mr. Chairman: I do thank you for the hindsight.

Mr. Martel: Based on many years of experience, so that you do not get into trouble again.

Mr. Treleaven: Junior.

Mr. Martel: Sonny.

Mr. Treleaven: Just trying to be helpful.

Mr. Chairman: Perhaps if you had been here last week when we set this up it would have been--

Mr. Martel: I was here last week. You were not here. The chairman was not here.

PROVINCIAL COUNCIL OF WOMEN IN ONTARIO

Mr. Chairman: Next, we have the Provincial Council of Women in Ontario. We have Anne Sinclair who is the president, and Phyllis Kerkhoven who is the chairman of legislation. Again, as you saw with our previously smooth-running operation here, we want to provide you with an opportunity to really stir things up and get everybody angry and then they will settle down eventually.

They are not always like that. So we are very interested in your comments and you have provided us with a short, written brief. We would like to extend to you the opportunity to make some initial remarks and then take some questions.

11 a.m.

Mrs. Kerkhoven: This is Anne Sinclair, our president. I am Phyllis Kerkhoven, I do legislation. We looked at all the hundreds of committees and we thought, oh gad. So our presentation is of the whole group, not any specific thing.

The Provincial Council of Women represents over 100,000 persons in Ontario through our Local Councils, Federated Societies, Affiliated Groups and Individual Members.

We welcome this opportunity to respond to your committee, and we believe the government of Ontario should have a provincial policy for appointments in these areas.

A process of application should be available whereby a standard application would be used for all boards, committees and agencies which would disclose financial status, all financial holdings, securities, lands, home ownership, etc. Applicants should be given the opportunity to not answer certain questions if these questions are not applicable to the board to which they are applying. If required for a particular appointment, this information could then be subject to scrutiny and security checks where advisable.

We did get a fair amount of flack from our own membership over this, because they did not feel security checks were necessary, but then when you take into account all of the boards, there are some where it might apply and we felt the standard application that would cover everybody would be most suitable.

A central sub-committee would then prepare a selected short list of appropriate applicants for the minister of the ministry associated with the prospective appointments. Members of the governments, friends and so forth, could also qualify. They just have to make out this application. If they have the qualifications, they are perfectly eligible.

We do not believe it is necessary for minority groups to be represented on the boards, agencies or commissions. However, where an applicant is associated with a minority group, this should not be a deterrent to the applicant if he/she is otherwise qualified.

This also is based on the hundreds of boards. Just to say a person belongs to a minority group is not sufficient reason to have them on a committee.

Municipalities and other agencies are now notifying citizens of positions to be filled on various boards. This process is open for the public to volunteer and would be most appropriate for government agencies also. Applicants could be solicited through local newspapers whereby various ministries requiring appointments could be listed. Upon application, the interested person would receive a list of specific boards, agencies and committees in need of appointments. The applicant could then chose those boards of interest and would so advise the clerk on return of the application.

Our president, Anne, had a lovely suggestion. I had visions of newspaper advertisements with miniscule print of those, you know, hundreds of whatevers, and Anne has suggested that it would only be necessary to have large groupings--something like the Ministry of Health, if you are interested in applying for a position with a board in the Ministry of Health, or the Ministry of Agriculture and Food, whatever--then you would just so advise whoever necessary. When you received your application from the ministry that you were particularly interested in, you would receive a listing of the boards available that you could apply for. This would save a lot of small print.

There are many citizens who are prepared to offer their services and skills and their individual talents could only be a benefit to any board, committee, or agency for which they are selected.

Mr. Chairman: Any questions from the committee?

Mr. Warner: I wanted to turn in particular--you provided two submissions to us. One which we have in our little booklet here, and the other which is an addendum that we received this morning.

On the second page there is the statement, "We do not believe it is necessary for minority groups to be represented on boards, agencies or commissions." Last week we looked at the Royal Ontario Museum and its appointments and quite frankly I was somewhat astounded to find that the Royal Ontario Museum, which prides itself, among other things, with having an extremely good collection of native artifacts, does not have a native person on the board of directors as an appointment. No first Canadian is sitting on that board. It seems rather strange. Nor was there any effort or concern that this should take place.

That seems to me a strange attitude to possess on that board. If I read your group properly, you believe very firmly in affirmative action with respect to women having their rightful, equal place in society. How do you balance that against the statement that it is not necessary for minority groups to be represented on boards, agencies or commissions, of which there are many? We have close to 600 such boards.

Mrs. Kerkhoven: We are not advocating that females, for instance, be on all boards. There are some feather-brains among us. We want to go by the process. We all apply. If we have the qualifications, we should be selected.

The same thing with the minority groups. If a minority person, a native person, wants to be on the museum board, if he or she submits an application and meets whatever criteria may be required, he should be selected. Just to have a token appointment for a native person to say, "They are here"--

Miss Sinclair: No one should actually be appointed to a board or a commission just to say: "You are the minority group. We are giving you this appointment because it will keep everybody quiet." If all these government appointments had been advertised

in the previous years--and I may say the Provincial Council of Women of Ontario for 63 years has been advocating this sort of thing, that boards should always be open to anyone who wants to join a board--it is your prerogative to choose whichever you deal with if you are a minority group. You may say: "I am Scottish so I am an immigrant. I could be in the minority group."

You do not have to be appointed just because you are a native or an Indian or anyone else. The jobs should be all advertised. All boards should be advertised. If you have the qualifications, you should be appointed. It should not deter you because you are a native that you did not get the appointment.

Mr. Warner: How would the provincial council of women respond if, for example, on the Royal Ontario Museum board, of which there are 21 members altogether, 15 appointed by the government, were male after this open appointment during which time many women applied as well as many men but only men were selected? How would your council respond to that?

Miss Sinclair: We would have to get to the chairman and ask him what his idea was that he thought the board could stand only men and not women. That would be discriminating against women. We would really be after him, whoever the chairman was.

Mr. Warner: Should not the same zest and zeal apply with respect to minority groups where they are frozen out of appointments?

Miss Sinclair: This is why we came today. We are not really telling you that minority groups should not be appointed. If it were open to everyone, the minority groups could be appointed. They could make the applications. The minority people have not been recognized because the government has not recognized them--not the people.

Mr. Warner: Right.

Miss Sinclair: You have to go back to the fact that it is the government's fault for not recognizing the minority people.

Mr. Warner: Thank you very much. That is where we are.

Mr. Chairman: I am interested in pursuing this part. One of the things the committee has pursued is the fact that the process itself is not a known process. People are not aware of how appointments are made. Is the gist of your argument simply that making the process known will resolve a number of these other problems of representing women, visible minorities and handicapped groups?

Miss Sinclair: Yes. You have that choice right now, if you look in the Toronto Star, by the city of Toronto. They list Riverdale Hospital and so on. You can go through there and it tells you to apply to the clerk, for whichever board you want to sit on. You apply to the clerk. He sends you out the information. If you want to sit on that board you make your application. It should not be government appointees.

I have worked very hard for the Conservative Party for the last 25 years. I never got an appointment because I never asked for it. I did not want it. To me it is not because you work for the Liberal Party, the New Democratic Party or the Conservative Party that you have to get this appointment.

11:10 a.m.

There are millions of people in Toronto who are just as good as your friend or my friend, whoever is in government. They should be given the opportunity to apply for these groups. The only way you can do that is get them advertised in the local papers, list them. When they make their application, if they want to sit on the Ministry of Agriculture and Food board, they will have listed every board and commission that is available to these people. That comes back out to you; you read it; you decide that you would like to sit on the Egg Producers' Marketing Board. You send your application back in with the full thing saying, "I want to sit on the egg marketing board." You send in all your credentials. You send in everything you have. Then it is up to this committee, whoever is appointed by the government, to scrutinize all these people and do it properly.

Mr. Chairman: Okay. Let me pursue it a little bit further. We have looked at a number of other jurisdictions where in the first place the process is much more open than the process here. You can go to your local library and see what all the appointments are. Advertisements are done. Recruiting is done through various ways.

It seemed to us that one option was a quota system. Most jurisdictions have rejected that. A second option would be some kind of an affirmative action program to identify a group of people who are underrepresented on your boards. Most of the jurisdictions we looked at do something like that though it is rarely a formal process.

A third option would be to try, on a broad scale, to say our agencies should reflect our population as a target. I think most of the members of the committee would probably be advocates of that. Our agencies should represent our population and, while we should not have a fixed quota or something like that, that should be a goal. If we lived in an ideal society, the agencies we appoint would represent the population we serve.

We keep that in the back of mind when appointments are made. Is that where your group is coming from as well? You should not get an appointment because you are a woman, but if the end of the process shows very few women get appointed to agencies, there is something wrong and for a little while at least we should look a little more carefully to find competent, qualified women to serve on committees.

Miss Sinclair: Actually, when a person makes his application his qualifications come in. I sat on a board for East York and you had to go there and you had to tell the councilmen and the mayor why you wanted to sit on that board. I was on the health board, and I had to say why I wanted to be on that board.

To me, if you select people, you bring them before a committee and you ask them why they want to serve on that board. They tell you why and if they can convince you they all have the qualifications and they are suitable persons, you appoint them, whether they are men or women.

The Provincial Council of Women is not a women's group as such. Just let me get the record straight. We are not a feminist group of any kind. We have been going for 63 years. We represent all people, men, women and children, all groups. We are not a feminist group in any way. If a man gets the appointment against a woman, we are not condemning him. We only hope that whoever had the qualifications got the choice.

Mr. Morin: How would you like to see this committee formed? Who would you like to see sitting on the committee? Who would have the responsibility of screening the candidates?

Miss Sinclair: You would have to have the committee set up. It is the government that mounts committees. I assume someone from the government of Ontario would have to be a person to be representative, but to me a broad selection of committee members could be picked from Ontario, from various groups that are active in these kind of committees, like boards and people who are interested. You have an enormous amount of such people.

You have the Salvation Army which covers a vast majority of people. You could get someone from there who knows quite a lot of people in the community who have worked hard. There is the Superannuated Teachers of Ontario. They could give you a representative. There are enormous numbers of groups that you could limit to the best of your ability. Each group should be set up as such to reach out to whichever ministry it is.

That is all you would need. You would only need about six to eight people to pick your commission. You do not need to make a million-dollar-a-year job. I think you would find, if you did come to the community, you would get a lot more people volunteering their time, as we all do, for nothing, rather than being paid huge per diem rates. This is where I think we have to look at it. You get more people volunteering to work on a volunteer board than you would get looking for payment, just for the honour of being asked to serve on a proper board.

Mr. Bossy: Just to follow up on what Mr. Morin asked, and this is the screening process, with opening this up as we are trying to do, we can envision a real avalanche.

I hope we have that much interest, and applications for all the different boards, agencies and commissions. There has to be a group set up to screen these. Then I am sure this group will be faced with the dilemma of 10 applicants being equally qualified, whether it is women, men or a combination of minority groups, whatever. That group would have to make a decision. That influence could be there, and they might feel they should appoint a woman.

Let us say there are 10 applications from equally qualified men and women. That committee would be faced with that decision,

and I am sure it would be man versus woman. That would put a very heavy weight on the decision making. Those people would be very criticized, if we remove it from the government. I like to think the government should be accountable. I am not certain someone would not say, "We will throw this out at arm's length and they can take all the flak about this." It can become very serious.

We are going to have much more input now with this opening up than we ever had. We will also find there are an awful lot of people out there who are equally qualified to serve on the boards, agencies and commissions. How would you handle that dilemma?

Mrs. Kerkhoven: Could I answer that one? Mr. Chairman also asked that question. I serve on Niagara region's ecological and environment advisory committee. When it was set up they had criteria. They wanted an limnologist, a chemist, and different types of people.

There was a list of about 25 things they might like to have, an environmental lawyer and whatever. If only one environmental lawyer applied and he looked all right, he would probably be chosen. There are criteria within the individual agencies, whether they need an accountant or a lawyer, to make a balance. Citizens would fall within these criteria.

Miss Sinclair: It is like opening up to the citizens to get appointed to boards and commissions, not just a selected few. You say there may be hundreds and hundreds of letters. Of course, there would. That is why you advertise, to get more people. Is it not better to get 100 applicants to come in wanting a job and pick 10 who are qualified than to have someone saying, "Johnny Jones helped me to raise \$200, so give him a job." Is it not better to do it that way?

Mr. Bossy: I can appreciate that, but who will make the ultimate decision? I am trying to come back to who will make the ultimate decision.

Miss Sinclair: The ultimate decision would have to be made by the minister. If a person applied to the Ministry of Agriculture and Food, the clerk who is appointed picks out the 10 people for the minister. He checks everything out. Then it lands on the minister to see who these people are. Surely you would go back to the minister concerned and let him read the application.

Mr. Bossy: And which political card they are carrying.

Miss Sinclair: No, there would be no political card. If he is the Minister of Agriculture and Food for the government in power at the moment, you cannot do anything else about it. If the New Democrats were in or the Tories came back in, it would be the same thing. You have to go to the concerned minister of whichever government is in.

Mr. Bossy: I am trying to say that we cannot remove the political influence of the final decision. I wish we could.

Miss Sinclair: It is very bad in a minister if he gets applications and he is just looking for a Liberal or a Tory or a New Democrat. That should not be a consideration.

Mr. Bossy: I said if there were 10 people equally qualified.

Miss Sinclair: No matter what his party was.

Mr. Bossy: If it comes to the ultimate decision by the minister to make that appointment after hearing from 10 equally qualified people, then it is still the ultimate appointment decision of the minister whoever it happens to be. The minister would have to admit there is no one of his party who is qualified.

Miss Sinclair: I would not say that was the case.

Mr. Bossy: If he has a favourite, he or she will get it.

11:20 a.m.

Miss Sinclair: When the applications come in, they are given to a clerk. There has to be a subcommittee to pick them out as well as the clerk. A subcommittee should be set up to go through these things. It would then go to the minister. It is known as a short list of officers. The committee has already chosen the 10 people. They only go to the minister because of his position. If a proper committee is chosen, no minister in any government will have influence, if that committee is working properly for its ideas.

Mr. Bossy: Would you suggest to remove lobbying from the applications, knowing through the years that a certain person will ask for support in his application? We are governed much by lobbying because that helps make decisions. A person applying would want strong support from his particular group and would urge them to send in letters with his application. Would you remove that?

Miss Sinclair: It would state on the application that the people had not lobbied and they would sign their names to that effect on the application when applying to a board or commission. That eliminates the lobbying.

Mr. Chairman: Any other questions from committee members?

Mr. Sterling: To my identified Conservative friend, you will have to excuse Mr. Bossy, who was trained in Ottawa under the Liberals as an MP there for a while.

Mr. Chairman: Thank you for that very helpful interjection. We thank you for appearing before us this morning. The next group who wants to make a presentation is the Ontario Public Service Employees Union. Mr. Clancy and Mr. Usher are with us. This is exhibit 35 in your binder if you are looking for it.

We will be happy to hear a brief presentation from you. We have received your brief and had a chance to go through that. We would then entertain some questions.

Miss Sinclair: Mr. Chairman, just before we leave, can I just ask one question?

Mr. Chairman: Certainly.

Miss Sinclair: Why is it all men here, no other women, one lady?

Mr. Chairman: One has to run out to 11 ridings and accuse them of being sexist pigs to get an answer to that

As you can see, this committee is roughly in operation this morning, but it is very rough. Proceed.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

Mr. Clancy: Thank you Mr. Chairman. With me this morning is Sean Usher, the director of research, education and campaigns with the Ontario Public Service Employees Union.

I would like to rather quickly read through our brief presentation to you and then follow that up with answers to questions if there are any.

The Ontario Public Service Employees Union welcomes the opportunity to present its views to your committee on the methods by which appointments should be made to agencies, boards and commissions of the government of Ontario and to the boards of directors of corporations in which Ontario is a majority shareholder.

More important, we welcome the fact that the committee has undertaken the consideration of this question. It is clear to us, as we have no doubt it is clear to you, that improvements in the present methods of appointment are necessary and highly desirable.

When an inventory is made, the number of government agencies, boards and commissions and crown corporations, is found to be quite staggering. The variety of functions and responsibilities which they are called upon to fill, is likewise very great. A uniform method of appointment is therefore unlikely to be appropriate. But the general principles which in our view should and should not apply, can be stated fairly simply.

First of all, the appointments should be on the basis of qualifications and merit, not on the basis of patronage. It is a betrayal of the public interest to make appointments as a reward for past services to the party in power. Even in cases where the past service has been meritorious, but in an area bearing no relationship to the qualifications and experience required, appointments solely as a reward for such service cannot be justified.

Second, the appointments should in all cases serve the public interest in its broadest sense. This would, we submit, be the result if qualifications and merit became the governing criteria as we believe they should.

Third, if appointments were subject to public scrutiny and approval, the public interest would generally be seen to be served. Consequently, opportunities for public scrutiny and approval should be provided. These opportunities would not in all cases be the same. A committee of the Legislature would in many cases be appropriate but not necessarily in all. However, in all cases some form for public involvement is required.

Fourth, the people or groups affected by the agencies, boards and commission to which appointments are made should be consulted and their opinions and recommendations given due weight. Moreover, where appropriate, the people or groups affected should be accorded representation; ynat is, some of the appointees should be their representatives, nominated by them. The people or groups affected would in this way have the assurance that their interests and point of view were effectively represented in the decision-making process. If one of their nominees was considered to be inadequate or ineffective, they would have the option of making a change when the term of that person's appointment came to an end.

Fifth, members of agencies, boards and commission serving a local or regional community should be elected by secret ballot as are members of Legislature and of municipal councils. This is how school boards and public utility commissions are constituted. The same methods should apply to district health councils, for example, and to the boards of directors of Ontario's public hospitals.

Alternatively, as a last resort, if the number of positions to be filled in this way seem to be excessive, responsibility for the appointments could be delegated to the municipal or regional council, thereby making the appointments indirectly subject to the election process. This is how family planning boards were appointed and under the Planning Act of 1983 how planning advisory committees are appointed. They are composed of such persons as the council may determine. However, in our view, direct election is always preferable and should be applied as widely as possible.

By way of illustrating the principles formulated above, it would be useful to discuss two bodies with which the union has had and continues to have a close working experience. We shall deal briefly first with the grievance settlement board constituted under the Crown Employees Collective Bargaining Act and, second, with the Council of Regents and boards of governors of Ontario's colleges of applied arts and technology.

A grievance settlement board is composed of a chairman and some 20 to 25 vice-chairmen and an equal number of members representing organized employees on the one hand and the employer on the other. The members representing the employees are nominated by the unions concerned and are formally appointed by the

Lieutenant Governor in Council. Similarly, the employer nominates his representatives while the chairman and vice-chairmen are appointed in consultation with the two sides. Individual grievances are heard by a panel of three members consisting of a vice-chairman, a member representing the employees and a member representing the employer.

Not only are the two sides consulted with respect to the chairman and the vice-chairmen, effectively each side has been a right of veto in the sense that no one is likely to be appointed as a chairman or vice-chairman in opposition to the expressed wishes of either party. Although seldom called into play, opposition to an appointment or re-appointment has, on occasion, been voiced with sufficient vigour that the appointment or re-appointment was not made. The result is that the fairness and impartiality of the chairman and vice-chairmen are recognized and respected by both sides, and board decisions, which under the act are final and binding, are accepted and implemented subject only to the right of appeal to the courts for judicial review.

The grievance settlement board hears and decides in a large number of individual grievances each year. It is the final step in the grievance procedure for crown employees. We are not saying we are in all cases happy with the board's decisions, but neither we suppose is the employer.

11:30 a.m.

Be that as it may, the board's role in contributing to satisfactory employer-employee relations in the public service is critically important. Equally, the method by which appointments to the board are made is critically important to the board's successful performance of its role. Were any other method used, in particular were the method in any sense unilateral or tainted with patronage, the board could not function as it does. Consequently, the method of appointment is wholly appropriate to the board's function and may be taken as an example of the way these things should be done. We commend it to the committee's attention accordingly.

Quite different has been the union's experience with the Council of Regents and the boards of governors of Ontario's community colleges. Under the Ministry of Colleges and Universities Act the council is composed of such members as may be appointed by the Lieutenant Governor in Council. The council in turn appoints the boards of governors of the individual colleges. The council consists of a full-time chairman and 15 members appointed for overlapping three-year terms. We know of no guidelines relating to the manner in which the members of the council are chosen.

The council acts as an advisory body to the Minister of Colleges and Universities in policy matters concerning the operation of the community colleges. In addition, the council has the responsibility for collective bargaining on behalf of the colleges with the Ontario Public Service Employees Union.

Experience has shown that the manner in which this responsibility is carried out has a vital bearing on the successful accomplishment by the colleges of their overall function. It will be recalled that the academic staff of the community colleges was unable to reach a new collective agreement with the colleges to replace the agreement that expired at the end of August 1984 and that a strike began in October. The key issue on which negotiations foundered and which led to the strike was the issue of work load, technically referred to as instructional assignments. The strike was brought to an end by the Colleges of Applied Arts and Technology Labour Dispute Settlement Act, 1984.

Among other things, the act established an instructional assignment review committee. The committee's report, entitled Survival or Excellence, was submitted to the minister last summer. The report came to be known as the Skolnik report, after the name of the committee's chairman.

In our opinion, the committee's report constitutes a solid endorsement of the union's position on the issues with which it was concerned. The committee found that work loads have increased, the quality of education at the colleges has declined, the increase in class size has been a major factor in imposing heavier work loads and other factors besides teaching hours must be taken into account in considering work loads.

On all these matters the committee's report shows that the union's position was fully justified, whereas the refusal of the Council of Regents and senior college management to recognize their relevance and legitimacy is roundly criticized in the report. The report stated that instructional assignment is at the core of the educational process. Accordingly, it is also an essential element of collective bargaining.

In case members of the standing committee might be inclined to think that our interpretation of the report is somewhat one-sided, we invite you to read the report itself. The report's title reflects the importance of the issues involved, and a reading of the report is well worth the time required.

The conclusion that we invite you to draw from this brief summary of the facts is this: If the Council of Regents and the boards of governors of the community colleges had been appointed according to the principles set out in the first part of this brief, we have not the slightest doubt that the negotiations in the summer and fall of 1984 would not have reached the impasse they did and that there would not have been a strike.

A Council of Regents and boards of governors that had been guided by the aims and objectives for the colleges formulated by the Skolnik report would have recognized the justice of the union's negotiating proposals. They would have recognized that these proposals were in harmony with and intended to contribute to a high standard of excellence in community colleges, and they would have been favourably disposed to reaching an agreement with this end in view. A one-year agreement for 1984-85 was eventually concluded under compulsory arbitration.

We make no comment on the negotiations for a new collective agreement now under way. In spite of difficulties and past differences, it is our firm hope that a new agreement can and will be reached and our firm conviction that, in the public interest, a new agreement must be reached.

Nevertheless, the challenge of the Skolnik report remains and calls for college leadership dedicated to its aims and objectives. A change in the methods by which appointments to the Council of Regents and the boards of governors are made is accordingly desirable. It is desirable not only from the point of view of better employee-employer relations between the colleges and their academic staff, although this is of no small importance; it is desirable even more in order to facilitate and further the pursuit of that excellence in the colleges on which the Skolnik report rightly laid so much stress.

We recommend that the Council of Regents be appointed by the Lieutenant Governor in Council from lists of qualified persons submitted by the various groups that are of primary interest in the successful functioning of the community colleges. These groups include the government, business, students, college staffs and their unions and the education community in its broadest sense. Each group would be entitled to a specified number of regents, and to ensure that the persons from the different lists are chosen fairly, the appointments should be subject to scrutiny and approval by the appropriate committee of the Legislature.

For the boards of governors of the individual colleges there are two possibilities: Either board members would be elected by secret ballot, or the boards would be chosen by the same method as the Council of Regents, with the municipal and regional councils having the same right of scrutiny and approval as the Legislature would have in the case of the Council of Regents.

We have given two contrasting examples of methods of appointment and their results. In the case of the grievance settlement board, the method of appointment is wholly appropriate to the board's task and has contributed significantly to the board's success in accomplishing this task. In the case of the Council of Regents and the boards of governors of Ontario's community colleges, a different method of appointment has been applied, with grievous results in 1984 and grave dangers for the future of the colleges, as the Skolnik report amply demonstrates.

We commend these two examples to your committee's consideration and hope you will recommend changes in the methods by which appointments are made based on the general principles we have stated, all of which is respectfully submitted.

Mr. Treleaven: I would like to delve into one of the aspects of your submission. It is fourth on the second page of the brief at the bottom. It says that when an agency, board or commission is set up, people or groups affected should be consulted, etc., and put on there. You carry on near the end: "If one of their nominees was considered to be inadequate or ineffective, they would have the option of making a change when the term of that person's appointment came to an end."

It seems to me you are suggesting that agencies, boards and commissions should be made up of special interest groups, pressure groups or lobbies to represent a point of view on that board. I was just going through it in my mind. As an example, let us take the new Nursing Home Residents' Complaints Committee. If you take your position or argument to a logical conclusion, you would end up by asking, who are the people who are interested. The residents of nursing homes would have their pressure groups. The nursing home operators' association surely would have its nominees on there. Perhaps the government, because of the expenditure of its moneys, would have a group, and the opposition would. So perhaps you would have board with four different groups, each of whom is interested in it.

Where is the public interest? Where is the neutral observer? Where is the average person in the street whose money is being spent on these ABCs? Who is representing their interests? It seems to me you are going to get down to a bunch of lobbies on each of these ABCs fighting it out.

Your last thing says that if the nominee of your particular group or my particular group does not vote the way we like, if in fact they start using a little independent thought, we will whip him right out of there, replace him and put it on. Therefore, you are making every ABC a battleground. You are removing the impartiality and the man-in-the-street element and you are making every one a battleground.

Mr. Clancy: First of all, I do not view independent thought as dangerous. Perhaps Mr. Usher could comment.

Mr. Usher: What we have to do here is contrast what happens in the real world with what we have proposed. What has happened on many occasions in the real world is that we have not had representation. We have had people who have aspired to be on various committees and boards and who, because of their political connections, to put it very bluntly, got on those boards and did not represent the public interest, were not informed of the public interest and, as we found out in some recent cases, would not have known the public interest even if it were presented to them.

11:40 a.m.

Our call is that in so far as representation can be accommodated from the various groups--and in your own list you suggested government and opposition--I would hope that they are representatives of the people and capable of fulfilling that function on behalf of the people. I do not see very much wrong with the general principle that interest groups be represented, as they are in the grievance settlement board, in so far as the public interest is concerned through their eyes.

Mr. Treleaven: Let us take the Nursing Home Residents' Complaints Committee. Do you see anything wrong with, let us say, the employees--

In most cases in nursing homes I think it is the Christian--

Mr. Martel: Canadian Union of Public Employees.

Mr. Treleaven: Okay. There is a Christian union that represents some of the workers in nursing homes. Do you see that union as being represented on the board? Do you also say that the nursing home operators' association should represent so many seats, so to speak, on that board? Do you see that as legitimate?

Mr. Clancy: Yes.

Mr. Treleaven: So you see polarizing each one of these boards into battlegrounds?

Mr. Clancy: Why do you presume that that would happen? All of those people--

Mr. Treleaven: Oh, come on now. You and Mr. Usher talked the real world. Now let us get back into the real world.

Mr. Clancy: All of those people have an interest in providing care, to use that example. They all clearly have a vested interest in providing care in one form or another. If there were a labour nominee, presumably that person would not be from a union that is actually representing workers at that home, but surely there could be someone representing labour.

If the workers there are organized by CUPE, then you would want someone who is not directly working for CUPE or as a member of CUPE on that board. However, is there anything wrong with having someone representing labour's viewpoint on that board? Why is--

Mr. Treleaven: Yes, I see something wrong with polarizing it like that.

Mr. Clancy: Your premise seems to be that the labour representative is not interested in the quality of care provided.

Mr. Treleaven: Oh, certainly. But I see them as being always on the side of labour and not as being independent minded.

Mr. Chairman: May I intervene? Are you suggesting that, in going through the appointments process, perhaps one of the sources of recommendations or recruiting sources would be something like the federation of labour, that in a broad sense a labour representative would be here?

The problem that Mr. Treleaven is pointing out is that a number of our agencies do that in different fields, and we have gone through this argument many times in the committee. A racing commission, for example, has a problem because it wants people who are knowledgeable about the racing industry and seeks to appoint people from the industry. They then have a conflict of interest when they try to regulate that. You are saying essentially, recognize it, formalize it and balance it.

Mr. Clancy: Yes.

Mr. Martel: I have not found an overwhelming number of boards, agencies and commissions in the province that reflect the province. I say to my friend the member for Oxford (Mr. Treleaven) that most agencies, boards and commissions reflect a self-interest group.

Let me deal with one specifically. I want to deal with the--

Mr. Treleaven: You are one-sided.

Mr. Martel: Come on. Take a look at all the agencies, boards and commissions across the province, and come to Sudbury if you want to use it as an example and, I suspect, in any other area. The overwhelming majority of the people in any community are blue-collar workers. I want you to point out to me where any agency, board or commission in that community has a preponderance of representatives of blue-collar workers in its membership. The preponderance is lawyers, doctors and what not. Let us not get so uptight about maybe labour getting a shake for a change, because they pay most of the tonnage.

I want to deal with the Council of Regents, however, so that my friend understands what I am talking about. Recently in Sudbury the regional municipality asked the city to name a delegate from the council to the board of Cambrian College of Applied Arts and Technology. They named one, a fellow by the name of Farrow. Down here in Toronto someone vetoed it, so the council named Farrow again; it would not name a second one.

The city had decided that that was whom they wanted representing the city on the Cambrian College board. In its infinite wisdom down here the Council of Regents said no. It then asked the labour community to put some names forward. They presented three names, and the Council of Regents rejected the three names as well. What a self-serving bunch.

We have to find a way of housecleaning that den of thieves and putting in people who represent the community. I have been offended for three years that they would reject the council's appointee and the labour council's appointees. Who the hell are they? They wanted to handpick their own group, not on the basis of what the community's interest was but from down here what they thought was good for us in Sudbury. They would not even accept the appointees to the board at Cambrian College who were presented by the labour community and by the council representing the people of the city of Sudbury. If you do not tell me there is something wrong with that, then I am in the wrong ball park.

First of all, the councillor was chosen by his own peers and the labour group was chosen by their own peers. What OPSEU is trying to say is, "Yes, if you are asking us to serve on a board, we are the ones who should choose who it is going to be in the best interests of representing a balanced view on the whole board at Cambrian in Sudbury."

If you look at that board, at the present time you have the head guy from Falconbridge Ltd. and somebody from Inco Ltd. I wonder whether the Council of Regents turns down the Inco appointee or the Falconbridge appointee. I suspect it does not, but it is certainly prepared to ignore the city and the labour council, and it is not accountable to anyone. We have to start right at the top.

I want to come to the point that worries me, because there is an apparent contradiction. Would you turn to page 6 of your brief at the top: "The council in turn appoints the boards of governors of the individual colleges. The council consists of a full-time chairman and 15 members."

On the one hand, you seem not to like what is going on: "We know of no guidelines relating to the manner in which the members of the council are chosen." Then on page 9 of your brief, you say, "board members would be elected by secret ballot," which is rather difficult, "or the boards would be chosen by the same method as the Council of Regents, with the municipal or regional councils having the same right of scrutiny." Are you saying that a council should have the final determination of the whole makeup of the board in that community?

Mr. Usher: I would refer you to the fact, Mr. Martel, that we have made a recommendation for the selection of the Council of Regents. We are suggesting that perhaps the boards would have to be done in the same way. Further up on page 9 it says, "We recommend that the Council of Regents be appointed by the Lieutenant Governor in Council from lists of qualified persons," along the lines of the grievance settlement board.

We do not have hard, set and fast rules. It is entirely consistent that, if it were found to be difficult or impossible to come up with a truly representative secret ballot method of appointment, which is the preferable way for us in terms of district health councils and many other kinds of boards, then we would suggest that we revert to the same kind of process for selecting the members of the boards as we recommend for the Council or Regents.

Mr. Warner: First of all, I appreciate your thoughtful presentation. We will have further debate in committee with respect to your proposals. The notion of having specific interest groups represented on boards does not automatically bring with it a battleground.

Mr. Treleaven: Oh?

11:50 a.m.

Mr. Warner: In some experiences I have had, I know that on the community legal clinic we are obligated to have a client or a former client as part of the board and we are obligated to have a certain cross-section from the community as well as a lawyer. Those interests are there and they are articulated, I think, in a very sensitive way. It provokes discussion, but it is not a battleground as such, and consensus is reached. Normally that is

how the board functions. I do not know about other boards, but that has been my experience over three years of chairing the board. That is the way it worked.

On page 9 you outline the groups that should be represented and so on, and I agree with you. Would you agree that in structuring this system for appointments we, or whoever is going to do this, should be sensitive to balancing male and female, minority groups, a wide variety of economic backgrounds and so on in an effort to provide as reasonable a balance as possible that accurately reflects the pluralistic nature of our society in Ontario?

Mr. Clancy: Absolutely.

Mr. Warner: The second question I had was with respect to security checks. It is a topic we are concerned with. As a committee I do not think we are exactly sure where to go on this one. Do you have any comments on whether there a security check should be done on all appointees? Second, to what extent should this security check be taken?

Mr. Usher: We would not only support security checks as such to a limited degree--and I will qualify that in a moment--but we should also be sensitive to conflict-of-interest guidelines, which may reflect in certain situations where a person would have an interest--I came across one a few days ago--in dealing with a particular college, hospital or institution.

We may have gone too far with the security check business. If a person is generally regarded as a good citizen, then that is satisfactory enough for me. I did hear part of the presentation regarding police and other areas like that. I am sure security checks there would have to be more stringent than in some of the areas we deal with.

What I am really saying is that as far as security checks are concerned, some areas are more sensitive than others. If there is a great sensitivity, then it has to be taken into account. However, I am more concerned about conflict-of-interest guidelines than I am about security.

Mr. Warner: In your opinion, would the same approach apply to financial disclosure?

Mr. Usher: Yes. Financial interests, political interests and business interests in terms of possible conflict.

Mr. Warner: On page 9 you are saying, if I read it properly, that there should first be a concentration on the local area being able to make a decision about a particular board or commission that affects that local area, and that only then, if it is not possible, should they come back here to Queen's Park to make a decision. Is that the way you see it?

Mr. Usher: Yes. That becomes more truly reflective of the interests of that particular geographic area. While it may seem that we were highlighting the colleges' situation, it was

simply taken as an example. I could get into using examples concerning hospital boards, regional health councils and so on.

Mr. Warner: You chose an excellent example.

Mr. Usher: Thanks.

Mr. Warner: Thank you very much.

Mr. Morin: I believe that all my colleagues here are all working towards the same goal: to have a system that will nearly be perfect. I do not believe in perfection. As long as we are human beings, it cannot be to the satisfaction of everyone.

However, I have difficulty interpreting what you said here on page 2, where you say: "First of all, the appointments should be on the basis of qualifications and merit, not on the basis of patronage." On page 3 you talk about groups you have represented: "Moreover, where appropriate, the people or groups affected should be accorded representation."

You seem to be asking that preferential treatment be given to groups. I think that if a group decides to appoint a candidate, and if that candidate is really representative of the group and is also competent, if I am the minister, to compare the qualifications of an individual, knowing the geographical area; knowing, for instance, if it were Sudbury, if there were no union representatives on the board, it would be simple: It would be totally illogical, especially when you know the population.

On the other hand, if you go to another area where unions are not that strong, should I be influenced by that and say: "They sent me a representative. Therefore, there should be a representative of the union because the union has asked us." That is where I am confused. Can you explain that?

I am sorry for the long preamble. I guess I learned it from my colleagues in the House.

Mr. Chairman: You are picking up bad habits.

Mr. Martel: We learned that from the chairman.

Mr. Clancy: I want to make one short comment and then ask Mr. Usher to pick it up from there.

It seems to me that one of the things we keep running into is a sort of stereotype of the unions. The federal Liberals and Conservatives have long talked about tripartites with business, government and labour sitting down. We continually hear that sort of rhetoric.

Why do we assume that unionists are not interested in the service they provide or the work they are doing? Why do we see that as being mutually exclusive, that the unions are collective bargainers and this person is on the board of the nursing home only because he is interested in better wages and working conditions? Clearly those people have devoted their lives to

caring for people, and that interest is not mutually exclusive. It is not something that all of a sudden they come to the board and are worried about wages and working conditions. Their working conditions are somebody else's living conditions in that nursing home.

So one of the problems we are running into is the stereotype of the unions being on the boards simply to protect, that it is an extension of the collective bargaining process. It is unfair to limit or to see their role as simply as that. It is much greater than that.

Mr. Morin: My question was, again maybe to put a little more emphasis on it, why should you as a group--and it could be any other type of group--be given preferential treatment when you know you have submitted an excellent candidate and it is up to the minister or whatever committee to decide whether that candidate should be recommended or not.

Mr. Usher: Let us not mix apples and oranges here. What we have said as a very primary plank in our presentation is that a direct election, which is probably more truly representative, is always preferable and should be applied as widely as possible.

Given that this is not possible, then the process we have outlined for the grievance settlement board, for example, could be adopted whereby you make that board, committee, council or whatever it is as truly representative as possible.

In fact, you qualified within your own question your doubt about a person being competent. We are saying yes, the people who are put forward for that particular group should be of good qualifications and should merit being on that board or committee.

The thing that appalls us, and I think you should have been appalled yesterday and many times during the last three or four weeks, is that people have, because of political patronage, been appointed to boards and committees of which they deny any knowledge and hold themselves out to be totally incompetent to deal with the situation for which they are drawing away the money that has been subscribed from the taxation of people whom they hurt and represent at the same time.

12 noon

I cannot say any more clearly that it is appalling that somebody would be in charge of a board or a commission who does not know the basics of that board or commission in terms of how it should represent the interests of the public.

Interjection: Name it.

Mr. Usher: I am not going to name it.

Mr. Mancini: What is the point?

Mr. Usher: If you get into being aware of what boards and commissions have been doing to protect the interests of the

public in terms of polluting their bodies or polluting their environment, then let us have people who know something about pollution and about the environment on those boards truly representing the people of Ontario.

Mr. Morin: I do not disagree with you at all.

Mr. Usher: Check into what happened with the Liquor Control Board of Ontario in terms of how the interests of the public were or were not represented by the people who supposedly were running it.

Mr. Mancini: We are aware of that.

Mr. Chairman: We will get to you later.

Mr. Morin: I agree with a lot of what you say. You should have a person who is competent to do the job. I agree 100 per cent. Why should you, for instance, appoint to the Social Assistance Review Board someone who does not know what it is to be unemployed, who does not know what it means to starve? Why would someone, for instance, be put on the Royal Ontario Museum board and, because he has money and buys paintings, all of a sudden he becomes a connoisseur? I do not agree with that. I agree he should be competent.

However, what I am saying about the group itself is that you will appoint someone who is competent. On the other hand, you can make a mistake, as anybody else can.

Mr. Usher: That is right--

Mr. Morin: It is up to the individual. It is up the minister, who, after having names of people who have been proposed by the committee, will have to make that decision.

On the other hand, if you have people who are competent--they are all the same; they are all triple-As--and there are two Liberals, two Conservatives and two New Democrats, this is where the decision is difficult to make. However, if the man has any good common sense, in my opinion, if he is not overinfluenced by others, he will try to choose the one who in his mind will serve the public best. If the minister happens to be a Liberal, he are going to help the person he knows well, the person he knows will be loyal to the organization. There is nothing wrong in that; that is done all the time.

Interjection.

Mr. Morin: That is right. So please do not misunderstand me. I agree 100 per cent. They should be competent and it should also be open; people should know what happens in these committees. That is only fair, and this is what we try to achieve in this committee. Am I wrong?

Mr. Sterling: I was interested in your comments on the community colleges, how their boards are appointed and when we were going through the very difficult times last year. But I have

difficulty in coming to the same conclusion that you do. In terms of community colleges, where the taxpayer of Ontario is paying 100 per cent of the shot, how can you then have a group that is not basically responsible to the province making determinations about the management of that institution?

That is where I have a great deal of difficulty, and I think there is a significant difference between a university and a community college, quite frankly, in this argument. Therefore, I would almost go in the reverse direction. I thought the issue would have been focused and would have been resolved sooner had we directly, as we were then the government, appointed the board. Then the Minister of Colleges and Universities would have been ultimately responsible for the settlement of the issue, whereas under the present scheme, where you have the Council of Regents, who are appointed and who then appoint the second tier, there is a looseness in where the accountability gets back to the minister.

That is where I have difficulty. I would actually prefer a more direct route and make them an agency of the minister so that, because he is paying 100 per cent of the bill, you are then dealing on a one-to-one basis.

Mr. Clancy: First of all, we have no difficulty with what you have outlined here; we think that is the route to go. When you say there is a present looseness in the system, that is a very gentle way of describing it.

To go back to what Mr. Martel said, the situation right now is absurd. Three people are nominated, but no one knows why they were turned down. That is a frustration. Aside from whether they should have been nominated, what are the criteria? You cannot get at them.

Mr. Sterling: How can you be accountable to the taxpayer in a large institution like that, where a lot of dollars are being spent, when the person who has to collect the taxes and spend the dollars has no direct control or say over the composition of the board? I do not understand. The accountability function is lost on it.

Mr. Clancy: Yes. Why are they there? Who makes the decisions vis-à-vis the budget dollars? Do you think the Council of Regents has--

This is just a roadblock in its present form. It is not representative.

Mr. Sterling: Would you rather have the now Liberal government employing the board that runs Algonquin College of Applied Arts and Technology in Ottawa?

Mr. Clancy: No. Our primary position is, let us elect it and let us ensure that it represents the various constituencies that are interested in running the board.

Mr. Sterling: Who elects it?

Mr. Clancy: Post it. Let us set up a system where those positions are put up for election.

Mr. Sterling: But where is the election?

Mr. Martel: May I suggest something, just to clarify this position for him? It is just to be helpful. There is only one elected health board in the province, and it is in Sudbury. It is because I went to a meeting, the Ministry of Health people were there and they were really angry that I made a motion which said that representatives of the various people involved in health would have a vote. There were 159 delegates, and the vote was 149 to two for my motion. The Ministry of Labour nearly went crazy.

That is the only area that has ever elected its own health board, and that should have continued. It has not worked as well as it should, because people then tried to start to appoint, but that is the way of doing it. You get the whole community of interests to council. You might have so many votes. It would be cumbersome, but none the less, it could still serve a much more useful function than somebody in Toronto rejecting the council delegates in Sudbury or the labour delegates appointed by their own groups.

It is certainly a lot more representative of the community than a few people in Toronto doing it. That is all I am saying.

Mr. Treleaven: We are really enlightened now.

Mr. Sterling: The examples brought forward represent probably a different approach that has to be taken on different kinds of appointments. The feeling I have is that where the province is paying 100 per cent of the bill, perhaps it should appoint directly so that the accountability in resolving the disputed problem will come right back to the doorstep and it will be able to resolve it rather than have to go tick-tac-toe before you get to the responsible board.

12:10 p.m.

Mr. Chairman: Thank you, gentlemen, for appearing before us.

ROBERT SLOAN

Mr. Chairman: The next exhibit is number 24 on the page marked X and the witness is Robert Sloan.

Mr. Sloan, the same thing applies to you as applies to everybody else this morning. We would appreciate your comments, and then we will ask you some questions.

Mr. Sloan: Good morning, members. As I sat back there listening to your comments and dialogue, it certainly highlighted for me the difficulty this committee faces in approaching the subject overall.

By way of introduction, I do not intend to read my submission. I gather you all have copies. I will not insult you by sitting here and reading something you have before you.

It struck me in the question where the lady talked about final decisions about who is appointed to what that the key to that, of course, is that they are ultimately made when all other things are equal or will be equal. That is the key phrase and the phrase that brings us here today: accusations and allegations made as to the selections of various areas. It is equally clear that you have had sufficient detail by way of mechanics of the various situations in various areas, so I will not belabour those issues at all.

Suffice it to say that what I ask and submit that you should keep in mind is that most of the boards and commissions are creatures of the Legislature that forms them. Consequently, any input--political, policy or other--is permissible only through the legislation that is available. Undoubtedly in your travels in other jurisdictions, in any overview you have made, you have come across appointments made on the basis of party affiliations, etc. I would like to submit to you that this is possible in Ontario and the boards and commissions with which I have been familiar only if the legislation permits it. To those of you who are more alarmed, Mr. McKeough had some difficulty with the city of Barrie some years ago. I think that highlights the issue in question.

In terms of the actual appointments themselves, I propose to bring to your attention a means of doing it, not the individual situations. As is often the case in presentations of this nature, people get drawn into specifics that are of particular interest to them. I probably have the advantage that I do not have that interest.

I would like to submit that a committee be structured, a legislative committee preferably, but perhaps one that includes some persons not elected, so that you have a representative committee similar to the one I am appearing before now, and perhaps from that committee you strike a smaller subcommittee.

It has been my experience that subcommittees work to advantage. I have worked with them in every jurisdiction in Canada, including the federal jurisdiction, and they speed up the general applications; they deal with the issues in a specific way. You would follow through to that committee the authority to deal with applications per se, availability of job openings, the advertising, etc. It could be done on a regional basis.

But first of all, you have a focus that deals with all the deals connected with appointments to various boards, commissions and tribunals. Otherwise, you would be running across the province all the time, be achieving virtually nothing and still be subject to the criticism that brings us here today.

As far as qualifications are concerned, it is clear from what I have heard this morning, and I trust you will agree, that each tribunal or committee actually reflects an individual need. I have been familiar with more than one. I have sat on more than one

and I have appeared before more than one. Each one brings peculiar abilities and capabilities.

A comment was made earlier that certain groups should be represented on certain tribunals. Let me highlight the fact that again we are dealing by and large with administrative law in this instance, and the basis of administrative law is that you have a cross-section public tribunal. So it is not improper, perhaps, to have representatives on the committee or on the tribunal, but it must be a cross-section, as required, if the administrative law dealings are to be followed through. In the sense of bringing forth individuals representing certain pressure groups or certain interest groups, by all means structure, it if you will, in that manner, but leave it to the ultimate committee, wherever you may elect to appoint them or how you elect to appoint them, to deal with the ultimate selection.

That can be done on the basis of qualifications, educational or otherwise. Again I would stress that educational qualifications are not necessarily the only qualifications. There is the old term "common sense," and believe me, Mr. Chairman, I have been around long enough that it still plays a very vital role in any decision-making process in which I have been a part.

Again, having selected the committee member or the legislative group, it is necessary that the candidate first agree that he will accept the position. I have known situations where nominees have come forth and appointments have effectively been made only to have the member turn it down at the last minute because someone forgot to ask him whether he would take it. This may seem picayune at first, but it is very vital to the total process.

I also think that, having accepted the situation, having accepted the position, the person ought then to be subject to further scrutiny. You have heard a lot this morning and, I am sure, in your earlier deliberations about how you select them. Equally important is what you do after you have selected them. How do you monitor their performance? What do you do if they are in there? For what term? How do you get them out?

I have seen people appointed for from one to three years. I have been involved with per diem boards and I have been involved with re-appointments. The big question is still there. Are they functioning effectively? Because your decision-making process in the first instance may ultimately not reflect that person's ability in the final analysis, ultimately he or she has to be appraised on a day-to-day basis, operationally within the group to which he or she belongs, not only by other members of that commission or tribunal but also by the area of the province to which he has some reference.

I would submit that it is an ongoing evaluation. It is an evaluation that can best be settled, preferably by the chairman of the committee or the tribunal in question, and that the person involved be appraised by the chairman with regard to whatever his shortcomings, strengths or weaknesses may be as they see fit. Believe me, there is nothing worse than having someone come

through, be properly appointed and then fail to live up to the earlier expectations. It does justice neither to him nor to his colleagues, who end up carrying the load, that this ongoing appraisal has not been done.

Concerning terms, the Manual of Administration talks about two three-year terms, if I remember correctly. Other terms are possible. I submit, in looking at your evaluation and at the process that you propose to bring forth in the final analysis, that you consider not only a means of appointment but also a means of termination and a means of evaluation throughout the process.

The chairman's function in any tribunal is vital. He has the ultimate responsibility. Mr. Sterling made reference earlier to responsibility to the minister. In the tribunals with which I have been associated, the chairman ultimately reported to the minister by way of an annual report. The question of funding, of course, flows from the ministry with which I have been involved. However, I would stress again that it is important to recognize that these tribunals must be independent. If we are to give them full effect, they cannot be agencies of the particular ministry.

The chairman involved should have the opportunity to report back and request the removal of a member--with full reasons, of course--and give the member an opportunity to be heard. I know of one instance where the chairman was advising a certain member that his performance was not up to scratch, only to have the member inform him that he had already been reappointed for another three years.

These are the dynamics as I see them. I will not take any more of your time, because I see this as a dynamic process. I see it as a process that you will undoubtedly have to deal with in a mechanical sense by way of the individual submissions you have received. More important, it must be recognized that there is a structure to be followed and that you are dealing essentially with a legal issue, an administrative law function. You are dealing with the right to be heard by the public at large, and those people who are appointed to these various tribunals, boards and commissions must be well aware of their responsibilities.

12:20 p.m.

Therefore, it is necessary not only that you address the initial selection of the individual involved but also that you build in a means of appraising that individual's performance throughout, because sooner or later, reappointments do come up, and sooner or later, someone has to account for that performance.

Thank you, Mr. Chairman. I will be happy to answer any questions.

Mr. Warner: Thank you very much, Mr. Sloan, for coming before the committee this morning. I take it you are here as a private citizen.

Mr. Sloan: That is correct.

Mr. Warner: You are representing solely yourself.

Mr. Sloan: That is correct.

Mr. Warner: I do not mean to pry at all. I am just curious about your motivation. What prompted you to come before us on this matter?

Mr. Sloan: That is a fair question. First, I am a lawyer. Second, I have been involved in the administrative law process. I have been involved in business extensively on both sides of the Atlantic. I entered law rather later than most people; however, I have been for some years active in the field. I have handled prosecutions for the Attorney General. I have been legislative counsel (inaudible), as Smirle will confirm. I have been in practice. I ultimately ended up as vice-chairman of the Ontario Highway Transport Board and also of the Ontario Telephone Service Commission, from both of which I resigned last April.

So I have an ongoing interest in seeing that the system, which I find necessary--and I do not mean to sound like God; please do not misunderstand me--but it can be improved upon. I think there are ways and means and I was delighted to see a committee like the present one struck for that purpose. My feeling was that I would have been somewhat remiss in sitting at home having some feelings about the issues in question and not doing something about it.

Mr. Warner: Good for you. I also appreciate your comment about one of the qualifications for the appointments being common sense because, as you are aware, that is not necessarily a criterion for public election, but it certainly would be an admirable quality for any appointee.

I wonder whether you have a comment with respect to two items with which the committee must deal, and they are security checks and financial statements. Do you have any thoughts on the extent to which an individual should have his or her life scrutinized regarding finances or a police record, etc.

Mr. Sloan: You are dealing here with qualifications, to which I referred in my first paragraph, as I recall.

They are both very necessary. The degree to which you require them and to which you intend to enforce them reflects to a large extent the tribunal or the commission in question. In some instances there are more problems with conflict of interest than in other cases.

I personally would advocate certainly financial disclosure and also any interest that the person may have with the industry or the trade with which the tribunal is involved. I have no difficulty with that. It should be part of the criteria that would be addressed in the ultimate selection.

Mr. Warner: Should there be a criminal check or a security check by law enforcement agencies?

Mr. Sloan: That is a very good question, which raises a few areas of law that you may perhaps wish to deal with it at some length, Mr. Chairman, before arriving at a decision. Let me respond to this gentleman's question.

In the application form for the Ontario Highway Transport Board for a public commercial vehicle licence you will find a section that asks "Have you ever been convicted of a criminal charge?" When we made the draft of the school bus legislation we got into the same general area of how much prying we could do.

It is a very, very difficult question to respond to. Yes, I think it should be done, because the degree to which you can pursue that is an open one in law and how far you can go whether or not the issue is relevant to the matter at hand.

Let me give you an example. I had a matter of the suspension of a motor vehicle inspection station in one case. This goes back many years. We moved to remove the licence. I had the file of the chap in question on my desk--believe me, and I will not go into the details. I had it before me: living on the avails of prostitution, incest, (inaudible), Royal Canadian Mounted Police, Americans, police and so forth. There was not one iota of that I could use, because it was not relevant to the matter before the tribunal, so you have to be extremely cautious about how far one can go with the information you are seeking.

I gather from your earlier comments that you have some expertise in this area. Does that assist, perhaps?

Mr. Warner: Yes, I appreciate that, because it is a sensitive area and it is one with which the committee has to grapple as to what type of security check should be done, how extensive and whether it is relevant to all positions or just to certain positions.

It is safe to say it is an open question at this point with the committee, and it is not an easy one to deal with. It does touch on certain aspects of our law, especially with respect to our charter, and so it has to be considered very seriously.

Mr. Sloan: The question is one of relevance more than of dealing with general other questions.

Mr. Warner: Okay. I appreciate that.

Mr. Chairman: Any other questions? Thank you very much for appearing before us.

MALCOLM CAIRNDUFF

Mr. Chairman: The next witness is Malcolm Cairnduff. His exhibit is 22 and it is on page V in your book.

Mr. Cairnduff: Mr. Chairman, I thank you for the opportunity of being here to express my concerns. I guess my time is up, so members may be exchanging greetings and leaving.

Mr. Chairman: No. Just proceed.

Mr. Cairnduff: My name is Malcolm Cairnduff and I am here as an unaffiliated constituent. I happen to reside in the constituency of Wilson Heights. In identifying myself I guess that I have to express that I do feel rather inadequate and certainly unqualified. I have not any professional background; I am just an ordinary grass-roots citizen who has had a longtime interest in this question of appointment.

I wish to refer to how this came to my attention. It was through a press notice in November 1985 that you would be dealing with this legislative scrutiny of appointments. I rarely read newspapers, and it came to my attention through a family member who was aware of my concerns.

I refer to this because I think there is something wrong with the system of communication between the ordinary constituents, the general public, and the elected representatives that we have. I do not know whose fault it is; I am not here to criticize, really. However, something really needs to be done in the way of improvement for the communication of relevant matters to the general public.

I did a little survey in my own neighbourhood, and no one was aware of this subject or of the government's concern and so on, and I find this lamentable. There has to be something done in the way of publicity and communication, and I hope to refer to that in my short time. I will try to make my concerns as brief as possible.

First of all, I am not a member of any political party. I am not here to speak for any partisan interests. I would like to take a moment to refer to something that we are all aware of that recently received some publicity in the matter of the appointment by the federal government of Dennis McDermott, who is a former labour leader, as ambassador to Ireland.

For one thing, I was certainly not aware of this vacancy. The idea that this was done without competition within the general public with a view to having qualified and suitable people--I am not to discredit Mr. McDermott--but the idea of a partisan appointment such as this agitates and aggravates the public, and it certainly does reflect on government and elected public officials.

I am certainly one who has no quarrel or disagreement with the partisan system as such. In any new system there has to be provision for what is called the partisan thing. It is a matter of accountability.

12:30 p.m.

So I do not find any problem with the partisan system if the government of the day, the elected officials are accountable to the people they serve whether they voted for them or not. The basic requirement is that the applicants--and I stress the word "applicant"; I have heard the term "candidates" used--go through a

process that tries to determine whether each applicant has the qualifications and the suitability to do the job. This must be the basic requirement.

I would also like to talk about the question that has been raised here about visible minority groups and so on. I belong to a group of war veterans. We are a dying breed. At one time we had in the public service preferential treatment in appointments in the post-war years. That seems to have gone by the boards. Government has just phased that out. Nevertheless, we are a group and we still exist. We are fading out.

But, having said that, as a war service veteran I am not claiming preferential treatment for that group. Indeed, getting back to the principle of qualifications and suitability, it is wrong to appoint just because they are representative of some minority group. I am in a minority group, too. In fact, I am a minority of one.

I do believe in the matter of accountability. There has to be accountability of elected officials to the general public whom they serve.

A question has been raised about the matter of security. I personally have to identify myself further: I have had a criminal conviction. Nevertheless, I strongly advocate that security checks on people are a very important criterion, and also the financial interests of applicants.

With respect to these vacancies as they occur, with due publicity about the vacancies to the general public, communication to the general public that these vacancies have occurred and there are appointments to be made to boards and commissions, the government of the day should be presented with a list of eligible, qualified applicants.

Who is going to determine who are the qualified applicants? I wonder myself whether there has been any presentation to this committee by the Ontario Civil Service Commission. I believe that is what you call it. As a citizen I personally would like to hear the concerns or provide an opportunity for this commission to give expression to how it feels about the process that is set up.

Mention was made, too, by the previous speaker of performance record and the evaluation of that. We, the public, deserve to have accountability from each committee member as to their performance record during that term on the matter of reappointment.

I just wonder as a question whether the Ontario Civil Service Commission had been invited to give a submission here?

Mr. Chairman: Yes, it has been before the committee in previous years and has made some lengthy submissions about how people are appointed, what they do and the qualifications.

Mr. Cairnduff: I see the Ontario Civil Service Commission as playing a vital role in the appointment process.

I am not here seeking preferential treatment for any group. I am repeating myself, but the basic requirement should be the qualification or the lack of it, the suitability to do the job. That is what I am looking for in the matter of appointments.

Thank you very much.

Mr. Warner: Thank you very much, Mr. Cairnduff, for coming before us. Do you live in the city of Toronto?

Mr. Cairnduff: I live in northwest Metro in the provincial riding of Wilson Heights.

Mr. Warner: Is that in the city of North York, then?

Mr. Cairnduff: Yes.

Mr. Warner: Are you aware of any particular boards, agencies or commissions that exist in North York?

Mr. Cairnduff: Do you mean municipally or are you talking about provincially?

Mr. Warner: Any at all that are appointed and not elected.

Mr. Cairnduff: No.

Mr. Warner: If I mentioned one, for example, the board of health, you would likely have heard that there is a board of health in North York.

Mr. Cairnduff: Yes.

Mr. Warner: Do you know how those people are appointed?

Mr. Cairnduff: The way I understand it, in this new term the city council did invite applications from the general public. I am not too sure about this, but I believe that through a committee of that council--the striking committee, I guess you would call it--they made certain recommendations about appointees that they would like to see in these various areas, including the board of health, which you mentioned. That is what I understand.

Mr. Warner: You have come here as an individual citizen representing only yourself.

Mr. Cairnduff: Yes.

Mr. Warner: Would you say that, generally speaking, both you and the vast majority of the general public have very little knowledge, if any, of the appointments system as to how appointments are made and who is appointed?

Mr. Cairnduff: I do appreciate your question, because this is very fundamental. It is a difficulty. There are grumblings among the general public that we are not suitably informed. You

mentioned the city of North York, where I live. It did advertise in the press, but it was limited to newspaper advertising, which I think is wrong. In my own constituency of Wilson Heights the members over the years have been sending out newsletters periodically for the occasion. But there was nothing, for instance, on this committee.

I thought there had been a serious omission in the recent publication that he sent out. There was no reference made. I do not now about the other constituencies throughout Ontario, but I hope the members did use that as an opportunity to say, "This is what we are dealing with," because this is their general mailing throughout.

I wonder whether I am answering your question.

Mr. Warner: Yes.

Mr. Cairnduff: I personally feel it is a very--

Mr. Warner: The whole thing is a bit of a mystery.

Mr. Cairnduff: It is.

Mr. Warner: Yes.

As my last comment, perhaps I did not explain myself clearly earlier on the question of minority representation. I was attempting to say that it seemed reasonable that meritorious appointments would be made in such a way as to reflect accurately the true nature of our pluralistic society in Ontario and not simply, as has been the past practice, excluding to a very large extent all but Anglo-Saxons from serving in the public interest.

It goes without saying that everyone wants to ensure that the very best-qualified people are serving, but we should also be sensitive to all the communities within Ontario.

12:40 p.m.

Mr. Cairnduff: We have enough sensitivity, I think. My little grapevine tells me the situation today is that there is a great deal of sensitivity about minority groups. In fact, I feel personally that there is an oversensitivity about minority groups.

I certainly would oppose any proposition of a board, agency, commission, committee or whatever that we have to give some kind of recognition to someone who is a representative of a minority group as such. I think that is wrong.

Times are changing. I do not know what the statistics are, but the Anglo-Saxons are not a majority any more in Ontario, are we?

Mr. Warner: No.

Mr. Cairnduff: I doubt it.

Mr. Chairman: Any questions? Thank you very much for appearing this morning.

BRANTFORD ETHNOCULTUREFEST

Mr. Chairman: The final group is the Brantford Ethnoculturefest. That is exhibit 49. It is identified as WW near the end of your book. We have Mr. Vince Bucci, who is the president, and Nancy Fallis, who is the executive director.

Mr. Bucci: Thank you very much. Before I make my comments, I will ask our executive director, Nancy Fallis, to give you a little bit of background about our organization so you know where we are coming from and some of our comments.

Ms. Fallis: We are an ethnocultural organization in the community of Brantford. It is a community of about 75,000 people. We are an umbrella organization for 25 ethnocultural member groups in our community.

Mr. Treleaven: Do you have an MPP who represents you?

Ms. Fallis: Yes.

Mr. Chairman: They used to have one.

Mr. Treleaven: Good old what's-his-name.

Mr. Warner: He works on the railroad, does he not?

Mr. Treleaven: Most of the time. He comes here once a month for his paycheque, I understand.

Ms. Fallis: Anyway, a little more than 30 per cent of our community is other than of British, French or native origin, which is a little bit less than the entire makeup of Ontario.

Basically, we meet three major areas of need in the community, and through these areas that we are identifying on a day-to-day basis as an agency we are able to come with the kind of comments that Mr. Bucci is going to make today.

As a social service agency, we meet the needs of clients from ethnocultural communities, whether they are new Canadians or people who have been established in the community for a number of years, who are experiencing problems because of a barrier that is being created through a cultural or a linguistic problem they have in the community, whether they have not learned English properly or whether they are just not able to adapt because of a change in cultural lifestyle. We try to aid people in that adaptation so their integration into our community is more successful.

We try to encourage full, equal and responsible citizenship amongst the people who are our ethnocultural member groups, and we do that in a number of ways. We try to encourage them to get involved in political activities, whether it is with any party, so they are aware. We try to sponsor all-candidates meetings so they

will be encouraged to participate, whether it is on a municipal, a provincial or a federal level.

We also have administrative and management workshops, which will provide these people with the expertise to go ahead and do some of the things that we encourage them to do as responsible citizens in the community.

Finally, we look at the folkloric aspects of multiculturalism in our community and sponsor one of the largest--Phil would say the largest--

Mr. Gillies: I would say the largest, and no one is contradicting me.

Ms. Fallis: It is one of the largest multicultural festivals in Ontario, and it is growing every year.

Mr. Bucci: The main thrust of our presentation relates very much to the position that the gentleman over there stated just a few minutes ago. Our perception is that there is a major flaw in our democratic process. The realistic view in a democracy is that the members represent the total population, the majority that voted for them.

If you look at the boards and commissions and if you look at the demographic analysis of our province, one would argue that they are not very representative. Our population in Ontario of non-Anglo-Saxons and non-French Canadians is more than 40 per cent and is increasing on a yearly basis. Fairly soon we will have a population in Ontario in which the majority will be nontraditional immigrants to Canada and recent immigrants.

It is fairly easy to make a negative comment and say to you people that the process that exists right now is not reflective and we must do something about it. Our organization has spent some time in trying to put together a proposal that we felt was very reflective and very conscientious in trying to deal with the problem.

The way it appears to be right now to our members is that only people who are connected with a particular party or who are friends of the member of provincial parliament may get appointed to a particular board or commission. The people who make that final decision in Toronto really are not aware of that individual. There is a letter or a form that you fill out and you give your background, but that does not necessarily reflect how competent that person really is.

We are arguing that the initial step should take place at the local level. Who would be better qualified than a multicultural group, the chamber of commerce and the local MPP? Those three groups would then make recommendations, to a maximum of five people, to a central body.

The value of this is that, first, you would have the people who know the citizens of that community best making the recommendations to you; therefore, you would have the best people

in that community. Second, you would have a data bank on a regional basis.

The third step is--and I do not want to take any of the legislative powers away from the members of the provincial parliament--once you collect all this information from the local level, then the deputy minister, a member of each party plus the president of the Ontario Chamber of Commerce and the president of the Ontario Advisory Council on Multiculturalism would then meet and, knowing full well what the vacancies were, would attempt to fill those vacancies, keeping in mind the makeup of the population in our province.

Too often we find when we go to our people and say, "You must become active and responsible," there is a sense of resignation, a sense of not really having the opportunity to truly participate in the decision-making process in our province. That may in a sense be why--and it has not necessarily been empirically proven; it is just a gut feeling of mine--at the municipal level or at all levels of government elections, we get such a poor turnout. People do not feel that they can actively participate, and if the majority of people feel this way--that they are not even allowed to get involved in the decision-making process--then what are we going to have to do?

12:50 p.m.

It is very commendable for this standing committee to re-examine the whole question. The key point that our organization would like to encourage you to consider seriously is that you must in all your boards and commissions have a reflection of the population makeup within our province; otherwise a very elite group will continue to dictate what should take place within our province.

Mr. Warner: First, I appreciate your presence here. Thank you for coming down all the way from beautiful Brantford to be with us this morning. I note that you are joined by your local MPP, who is here to assist. It is a tribute to him that he takes this interest. This is not an ad hoc committee, although it sometimes functions that way.

I would like to substantiate a portion of what you have mentioned in your report. What the committee has discovered to date is that in general the boards, agencies and commissions have a profile that reads almost exclusively male, white Anglo-Saxon, rich and powerful. That is generally the profile of most of the appointees. You are right, the practice to date has been for the most part to ensure that non-Anglo-Saxons will be frozen out of the appointment process. We are here to provide a thaw to that.

I have a couple of questions. First of all, I wonder if you see in what you have identified as a process a role for the local government, either the city government or as it applies a regional government in this selection of putting forward of names?

Mr. Bucci: I think we would have no problems in having a member of any council sitting on this type of committee. My thoughts were that the chamber of commerce is representative of the business community and the multicultural group represents all the immigrants within that community. Between the two of them, our view is that it is a truly reflective group in examining the total makeup of that county or city. Certainly there is no objection to that.

Mr. Warner: I will be quite candid. I was a bit surprised at the inclusion of the chamber of commerce in the selection process and at the exclusion of the city council in making that choice.

Mr. Bucci: My problem with city council is that it is an elected body and the aldermen and even the mayor--I am not so certain that the mayor has the time to sit on such a committee, but if someone had to sit on a particular council, then it would have to be the mayor, who would be the most representative of that community.

Mr. Warner: That is interesting. Would you then concede that if you had the chamber of commerce involved, that it would also be appropriate to involve the local and district labour council with an appointee to the committee?

Mr. Bucci: I would suggest that the majority of the labour people would be represented by a multicultural group.

Mr. Warner: Okay. It is an interesting proposal and you certainly will strike a very sympathetic note with the committee because I think that the committee is attempting to be sensitive to a new direction in appointments and making it as open as possible.

One last question. From your experience in Brantford and knowing all of the various boards, agencies and commissions which might happen to exist there, do you think that the public in Brantford is generally aware of the process for appointments, how the appointments are made and who gets appointed to these various boards?

Mr. Bucci: Unfortunately, the general public is not, but some of it is. The ones of immigrant extraction, the majority of them who might wish to sit on it, do not put their names forward because, what is the case within the provincial appointments, likewise I am sure you would agree is the case at the municipal level. If you do not know the council members, each council member who is elected has a set of people whom he would like to see appointed and there is an internal debate taking place in an in camera session as to who gets appointed. Therefore, most of these people feel: "What is the sense? I am not close to him. I do not have money. I do not own a business. I do not have a high profile in the ethnic community. Therefore, there is no sense in my coming forward."

Mr. Gillies: I have a couple of brief comments and a question. Mr. Warner really touched on a couple of the questions I was going to ask.

First, by way of clarification, the Brantford Regional Chamber of Commerce over the years has filled a number of different mandates and has, I think, a different role in the community than may be the case in most communities, which may explain why Mr. Bucci and Ms. Fallis have suggested their role.

It is a much broader group in Brantford over the years that has spawned this group. Our Brantford ethnoculture fest originally started, am I not right, as a committee of the chamber of commerce many years ago.

Mr. Bucci: Right.

Mr. Gillies: Our community information centre, our council on continuing education, over the years has been a very broad group that has its fingers into everything. I know that is not the case in many communities.

However, I do think Mr. Warner's point is well taken, that in most communities, and probably even in Brantford, if the chamber were to be directly involved in the process we would want to have some direct involvement from labour. While I think, as you say, that most of labour's interests would be served by a culturefest, in many communities if we were to apply your model, you would want to have the labour council equally represented with the chamber.

The only other point I wanted to make was about the question of appointments. Again, Mr. Warner touched on this. I wanted to get your thoughts on the process in the past as to institutionalizing some of the things you are suggesting.

With respect to the question Mr. Warner asked you about, whether or not the community at large was aware of the process that is gone through, when I was first elected in 1981, I understand this is relatively unusual, but I wrote to most significant interest groups in my community, the labour council, ethnoculturefest, the chamber, dozens of them, boards of education, you name it, just recognizing the fact that the local member is often called upon to make recommendations about appointments and asking that they submit names and qualifications and curricula vitae of people they would like to put forward.

That was five years ago and I have not done it again. I doubt that many members probably ever went through a process like that. What do you think about institutionalizing something like that? You recognize in your presentation the role of the local member. Is it largely a question of the member's reaching out into the community and just recognizing the fact that the government of the day often does call upon a member for recommendations, recognizing that instead of keeping it a closely held trust of the member it should be a broadly shared trust of the member with the community?

Mr. Bucci: I think that is the major intent. Not only would it be broad from that perspective, there would be a feeling that the person they elect to represent the business community or the ethnocultural community will stay within that committee and will argue on behalf of the validity of their member. So often in any small group we become very myopic in terms of some of the decisions we make. Therefore, what we are trying to do is basically broaden the whole process so that it does represent our total population.

Mr. Gillies: I have one final question. In the city of Brantford, and I do not know if this is common in other municipalities, the municipality advertises annually for people to put themselves forward for agencies, boards and commissions. I am not a regular member of this committee and I apologize if this is well-worn ground. Has thought been given to the province similarly publicly inviting submissions?

Mr. Chairman: Yes.

Mr. Gillies: Thank you very much.

Mr. Chairman: Any further questions? We thank you very much for your time and effort in appearing before us this morning.

The committee stands adjourned until next Thursday at 10 a.m. We will do part of the meeting on receiving any reports on televising the proceedings and we may have some further submissions on this matter as well.

The committee adjourned at 1:02 p.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES, BOARDS
AND COMMISSIONS

TELEVISION IN LEGISLATURE
APPOINTMENTS IN PUBLIC SECTOR

THURSDAY, FEBRUARY 6, 1986



STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES, BOARDS
AND COMMISSIONS

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)
VICE-CHAIRMAN: Mancini, R. (Essex South L)
Bossy, M. L. (Chatham-Kent L)
Martel, E. W. (Sudbury East NDP)
McCaffrey, R. B. (Armourdale PC)
Morin, G. E. (Carleton East L)
Newman, B. (Windsor-Walkerville L)
Sterling, N. W. (Carleton-Grenville PC)
Treleaven, R. L., (Oxford PC)
Turner, J. M. (Peterborough PC)
Warner, D. W. (Scarborough-Ellesmere NDP)

Substitutions:

Knight, D. S. (Halton-Burlington L) for Mr. Morin
Villeneuve, N. (Stormont, Dundas and Glengarry PC) for Mr. Turner

Clerk: Forsyth, S.

Assistant Clerk: Decker, T.

From the Office of the Assembly:

Mitchinson, T., Director, Information Services

Witnesses:

From Cooper Lybrand Consulting Group:

Applin, M., Consultant

Individual Presentation:

Crispo, J., Professor of Management Studies, University of Toronto

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND
AGENCIES, BOARDS AND COMMISSIONS

Thursday, February 6, 1986

The committee met at 10:08 a.m. in room 228.

Mr. Chairman: Maybe what we could do is get started with the tape and have a look at that. Then we can proceed from there. Todd, would you see if you could find me a Progressive Conservative?

Mr. Martel: I have a question. I do not see a Tory anywhere. I think it sets a bad precedent to start without them.

Mr. Chairman: We cannot sit around and wait for them.

Mr. Martel: Either that or we adjourn the meeting until they show up. You have this happening in other committees, and if you go without a full complement, it sets a bad precedent.

Mr. Treleaven: As far as a quorum is concerned, I do not see any reason to wait. If you have your six, away you go, whether there are any Tories here, NDP or whatever.

Mr. Chairman: If we were making decisions or taking votes, I would hesitate to start it up also, but this morning we have a tape presentation, and it struck me that it would be--

Mr. Treleaven: The rules call for a quorum, a majority. That is it. If there are no Tories here, tough--or NDP, which is more common.

Mr. Martel: Precedent has prevailed.

TELEVISION IN LEGISLATURE

Mr. Applin: To start the morning off, this is the tape we tried to show last time that did not work because of the volume. It is a 17-minute compendium of all that we did during the test period.

Mr. Chairman: I am not convinced we need a Hansard for this if it is going to cause problems picking it up.

The committee viewed an audio-visual presentation at 10:11 a.m.

10:27 a.m.

Mr. Chairman: We had a bit of discussion about this at the previous meeting, which unfortunately I was not able to attend. This tape has been shown to the Board of Internal Economy in a report to them. I was present at that meeting, and generally I think the feeling of the members was that in the test period we have resolved some problems and identified some others.

In the report you tabled at the last committee meeting, the remaining area where there is some contention is the matter of lighting. Some broadcasters have talked to me privately and said that in taking the levels down to reduce glare on the members, we got to borderline areas where the quality of the tape was not good enough for them to use. There is the obvious problem with the audio.

I did notice, for example, in the Regina segment that they have the same audio problem of thumping on the desk and papers rattling in front of the microphone. The sound system there is not exactly all that it might be.

I think that in the report to the committee the consultants have provided us with a reasonably good analysis of the test period. From my point of view it works, but it needs a little refining. It seems to me that before we proceed to rewrite rules, however, we would want to have it in operation for a somewhat longer period of time and get some general feedback.

The unfortunate part of our test period here is that it did have limited play. Not a great number of people have seen it. So far it has been restricted to media people, members and a few staff people who have taken the time to review the tapes. I took them home when we were testing and, on a weekly basis, I took a look at one day's sitting. It seemed to me that, in general, the tests established that the guidelines we laid out provide for a somewhat more interesting broadcast. Frankly, I liked it.

There are some rough spots in it that will have to get worked out over using it for a little while before we can rewrite guidelines, but in general I was quite happy with it and most of the people I have had a chance to talk to thought it was a good, workable system. It has a little more variety than what is provided in Ottawa.

There are some technical problems that still have to be worked out. The sound system will not get resolved until we install a new sound system. The lighting is pretty close, and in your report to the board you indicate that you thought you had resolved that, but again, we need to test it for a while before we get there.

Do you have any more comments you would like to add?

Mr. Mitchinson: Just to be clear on it, what we were showing in these test period tapes in many instances was not strict adherence to the committee guidelines as they exist now. In our report we identified three areas that we wanted the committee to consider. If the committee does not want to consider them at this stage of the game and if they think it is too early to do it, we would like some clear direction about whether, for instance, the over-the-shoulder shot, the wide angle, the split screen and stuff like that are deemed to be in compliance with the guidelines. It is very important for us to have a clear direction on that.

Mr. Chairman: Just to respond briefly, I believe they are. The comment I would make is that some of the over-the-shoulder shots, from my point of view, were not the best. Just to run down briefly from a personal point of view what I thought was wrong about it--most of it, I thought, was right--some of the camera angles on over-the-shoulder shots did not make a whole lot of sense. We do not quite know where we are going with that yet and we need to try it a bit further.

The one area where I think we have not resolved the problem yet is that, when there is some kind of disorder in the House, I do not think we have found a way to portray it yet. We still leave the Speaker standing and doing a single shot of the Speaker calling for order when it is not really coherent. People who do not understand the parliamentary system would not quite know what was going on. We have not found a way to broadcast that in a way that is easily understood. Perhaps if people watch for two or three weeks they will understand after a while if somebody runs a little logo across the bottom that says, "The Speaker is now trying to restore order in the House."

The desk thumping is an example of something that I do not think you are going to stop until this thing is broadcast for a while and somebody back home asks, "What is all that racket every once in a while?" When a member has had to explain 70 or 80 times what the thumping of the desks is all about, the members will decide whether they want to continue with that practice, applaud or do something else.

I suggest to the committee and to you that what you have done is well within the guidelines, at least from my reading of the report. If there is something wrong here it is just that we are a bit new at the system and we need to work with it for a while. I suggest that after we have broadcast this thing for a period of time, it would make sense to me to have the committee review the guidelines then to see whether we have consensus on whether all those things are useful or not.

Mr. Mancini: In my view, the split screening--and I have brought this up before--is going to continue to be a problem. We did not officially prohibit it in our guidelines; it was left up in the air after I had made my objections.

I just do not know how the director of the televised Hansard is going to be able to carry on on a regular basis without having numerous complaints from members about the split screening. If he is going to split screen a question of the opposition and if I or one of my colleagues have a question and he does not split screen ours, there is going to be a complaint, and it is going to be a valid complaint. If he is going to decide when it is dramatic enough to have a split screen, then he is editorializing, and our guidelines prohibit editorializing.

I think we are going to have a continuing problem with split screening. The other legislatures do not allow it. Saskatchewan in particular has it right in the standing orders. It is not allowed in Ottawa. We are making a dramatic departure from what is already being done in the other legislatures and in the House of Commons.

We are trying to make it interesting. I think all of us want to make it as interesting as possible, but I in no way want to leave editorializing in the hands of a civil servant, and that is exactly what the director of the TV Hansard is going to be.

I just want to caution everyone here that it is going to be very difficult and numerous complaints will come up when we could have avoided all of them.

Mr. Mitchinson: This is why we are asking for direction on it. I do not want to put our staff in a position where they are technically offending the guidelines and having to defend that at some point in time.

Mr. Chairman: What we are saying to you, Mr. Mitchinson, is that the committee is divided a bit on that issue; we do not have a clear consensus on it. I noticed that in the little comments on the sheets that were submitted by members--there were something like 150 or so sheets returned--one member objected to it. It may even have been the same member.

Mr. Mancini: That may be, Mr. Chairman, because a lot of other members in the Legislature are not quite aware yet of what we are doing, and once they find out that--

Mr. Chairman: Yes. Then we may have a consensus on that.

Mr. Mancini: Once they find out that someone else is getting the benefit of this dramatic exposure and that it happens only when the director of Hansard thinks it should happen, then we are going to get a lot more complaints.

Mr. Chairman: That is a pretty accurate portrayal of where we are. For example, there are 11 members on the committee. One member thinks the split screens are bad; the other 10 are not sure. I would say that that is a fairly accurate portrayal of how the members in the House feel. They do not know enough about it yet to say whether it is good, bad or whatever.

Mr. Treleaven: Mr. Chairman, you mentioned that we did not quite know where we were or did not have a handle on portraying the House when the Speaker was trying to get order. I feel very strongly that when the Speaker is trying to get order, the camera should be straight on him and should not be out portraying anything else. The yo-yos in the House who are trying to perform for the cameras should not have an advantage of getting extra camera time by creating extra fusses. It should be the opposite. It should very definitely not be on them.

Mr. Chairman: I would take the exact opposite point of view from that. I believe it puts the Speaker in a very awkward position in that he is trying to restore order, usually to question period, and when it is portrayed on video, it does not come across that way.

My quandary is that I understand your point perfectly. I would be very--

Mr. Treleaven: You are on the side of the yo-yos.

Mr. Chairman: I would be very reluctant to give anybody air time for misbehaving.

Mr. Treleaven: Right.

Mr. Chairman: We need to play with the system for a while until we devise a technique that does both, that provides the Speaker with the opportunity to call for order and that portrays it in a way that is readily understood. I do not know what the answer is yet. That is what we are going to have to do.

Mr. Applin: I want to make the point that, technically speaking, it is very difficult to set up split screens. We made the point in the presentation to the Board of Internal Economy that it is often the case that we cannot do it; it is rarely that it can be done. It may just mean that the speed at which question period moves precludes the use of split screens.

Mr. Chairman: I think you are quite right on that. My instinct tells me that when we have used this technique over a three- or four-month period, we may well be able to come to the conclusion that just because of the speed of question period, moving back and forth, it is not possible to use that technique in a question period situation.

It may be possible and desirable to do it on second reading of a bill, where it is long and boring anyway sometimes, and you might be able to set up so you could use that technique there. Broadcast experience is what we are lacking here. We have not used this system very long.

Mr. Martel: Concerning the yo-yos, I have watched the Ottawa one. There is the Speaker flailing away trying to get control of the House. You are quite right: The public does not know what the heck is going on, but I think the yo-yos, if they are shown acting like yo-yos, are going to conduct themselves a little more appropriately.

Mr. Treleaven: No.

Mr. Martel: I venture to say that some people back home might not like some of the performances of some of their yo-yos.

Mr. Chairman: I can think of some members who do not look very dignified on occasion.

Mr. Martel: That is right.

Mr. Treleaven: Not to mention any names.

Mr. Chairman: Not naming names.

Mr. Martel: I can only look across the way.

10:40 a.m.

Mr. Chairman: One suggestion I had thought of was that when the Speaker calls for order, perhaps one technique that might be tried would be to use a wide-angle shot, which generally indicates, without focusing on a particular member, that there is some disorder in the chamber for a moment, and then move towards the Speaker so we would see a cause and effect, that there is some amount of noise or disruption of the proceedings, and then proceed to demonstrate that the Speaker is now trying to restore calm. I do not know how workable that is.

Mr. Martel: We should test that, because it leaves the Speaker in an awful predicament, standing and saying, "Order, order." We know who is causing the problems; it is always the same group, so we might as well focus in on them.

Mr. Newman: That is the real parliament. That is what really goes on. Otherwise, it is phoney.

Mr. Martel: Yes. It leaves him appearing to be trying to demand order and you cannot hear or see anything. The quick wide shot showing the bedlam--

Mr. Bossy: Anyone watching his television when the Speaker is calling for order, and hearing all the sounds that are being projected, will use his common sense when he views it and know there is disorder. That is why the Speaker is calling for order. You want to say that we should identify who is causing the disorder.

Mr. Martel: No, I did not say that. That was facetious. I am saying there should be just a shot panning the whole thing quickly so it does not reflect or try to identify anyone. I am saying the opposite: You just do a quick shot that shows there is bedlam, and then you go back to the Speaker trying to bring order.

Mr. Chairman: The one thing I really liked about these tapes is that, after you have watched a day's proceedings, it is pretty accurate. It is pretty much what the House is like in my experience as a member, and that is exactly what I wanted to see portrayed. I did not want some kind of stilted process that is unreal. We have not perfected it yet, but I do think we have managed to portray the House as it is, warts and all. The process from then on is to remove the warts, not to change the process.

I was quite happy with it once I had seen a day's proceedings on video. As someone who was there and then went home and watched it again in the evening, I thought it was pretty accurate. It was pretty good stuff. It was interesting to watch. There were a couple of spots where I could see where it would have been a little difficult for someone just watching to understand what had happened. However, it seemed that the guidelines we had laid down provided for an accurate portrayal of that day in parliament, and that is what we were trying to do. We have not perfected it, but we are on the right track with it.

Mr. Bossy: Yes, I can agree with that part of it. The only thing that worries me is, say, the over-the-shoulder shots. If I happen to be the person who has an over-the-shoulder shot, I may be offended. The members of parliament are fairly selfish; they want equal visibility. If one person is going to have that beautiful shot all the way through and the other guy responds or makes a question and he gets an over-the-shoulder shot, it takes a little while to identify where he is.

Mr. Chairman: Yes. I found the over-the-shoulder shots a little bit confusing from time to time.

Mr. Bossy: The over-the-shoulder shots should be ruled out. That is the initial approach. Maybe we could look at it further.

Mr. Chairman: I also noticed that, in things like the over-the-shoulder shots, when you watch the complete video, it was interspersed with the full face shot or the mid-shot, so it made some sense there. In viewing it out of context in this way, you had to orient yourself. Who is speaking? Is it part of question period or a speech? I found in looking at this kind of edited tape that the over-the-shoulder shot was not very effective. When you are watching somebody talk for five minutes, it was not a bad technique to provide a little variety in what you were looking at.

Mr. Treleaven: I would like to put it as an overview that television in the House can do one of three things. First, it can hide reality--what really goes on--keeping it so sterile; second, it can show what really goes on; and third, it can give an advantage to the yo-yos or the Howdy Doodys who really want to perform. It can give them their avenue for performance with split screens and reaction shots where the Speaker is trying to get order and so on.

I feel it is just as important that we stay in the middle point. Reality is just as important. I would rather go to the sterile side than to the performance side. If we have to err in either direction, reality is it. We are doing a disservice where we give a stage to the yo-yos to perform that was not there before.

Mr. Chairman: I would agree with that. Before we can really make much of a judgement call, we have to see this and people back home have to see it. I really believe that the next stage in the testing process is to start providing a broadcast in some form and that, after we have listened to people on the streets and in our constituency offices and to all the advisers we have now, we will be able to make some better judgement calls as to what is appropriate and what is not.

Watching what I have seen so far, I think we have picked the middle road and we have portrayed reasonably well. It is a little rough around the edges, but I would put to you that people who operate cameras need some experience at it, and that showed up a bit. People who choose the shots need some experience at what they can set up and what they can use. We have not got a really good handle on that yet.

Members need to do two things. I do not think there is any question they will change their behaviour somewhat. For example, what you saw in that little clip were people who were not aware that there was a television camera going and who would perhaps not pick their eyes, yawn or something if they were a little more aware that it was present. I would also agree with Mr. Martel that what you might think is a terribly witty line on the spur of the moment may not sit so well with somebody who was not part of the excitement of the moment. You may have to be told about that a few times before you alter your behaviour.

Mr. Bossy: If we are going to have different shots, in Ottawa they are controlled by the panel. When the switches are thrown to the microphones, they activate the cameras. But if we are going to go to all these different types of shots, then we would have to have the director sit in the Legislature and direct back, because there is no way the control centre would know what was going on in the House unless someone were present to direct the switching of cameras.

Mr. Mitchinson: That would happen in any event. There will be the manual override on the cameras and there will be a technical director in place at all times anyway, so it is not a technical problem.

Mr. Chairman: In the same way, I would suppose that Hansard operators now have to make a decision about whose microphone gets switched on. It would be the same kind of thing.

Mr. Mancini: The committee has come a long way in establishing guidelines, reviewing the procedures and trying to ensure that we do not offer an unreal, sanitized version of what happens in the House. I do not think anyone wants that.

Unanimously here in this committee we have expressed some disappointment with the coverage in the House of Commons, that it is too sanitized and that it is very difficult, if not impossible, for the average citizen to try to follow what is happening. The fact that we have decided we are going to have explanations flash up on the screen on a regular basis is going to take care of a lot of the concerns we have as far as giving an unreal version of what is going on in the House is concerned.

I want to agree with Mr. Bossy with regard to the over-the-shoulder shot. It really serves no benefit that I can see. Maybe it will outside of question period. When a member is on his feet for 15, 20 or 30 minutes, maybe it will give a break to the viewing public when you see a different kind of shot. Maybe in that regard we could authorize no over-the-shoulder shots during question period, but after question period, during speeches, it might be appropriate at the discretion of the director in order to relieve some of the boredom that may take place.

10:50 a.m.

I want to re-emphasize the fact that, according to the guidelines we have set up, it is not the responsibility of the director to create drama. It is the responsibility of the members

to create that drama. Some of them will do it better than others. Some will be more interesting than others. As the chairman has said, some will be wittier than others. For us to sit down and try to guess how we can make it wittier or more realistic is, in my view, out of our jurisdiction.

To get back to the point I wanted to discuss earlier with regard to when the Speaker deems that there is disorder and we want to start panning all over the place for a few seconds to show that the disorder is present, I think we are going to run into some judgement problems by the director of Hansard. Does he shoot the government members who are responding to the opposition or does he shoot the opposition members who are responding to the government members? That is going to be a constant decision-making process by the director, and there are going to be many times where he is going to be informed of the unhappiness of certain members with his decisions.

When the Speaker is on his feet, all microphones at present are cut off, meaning that all eyes should be on the Speaker, and I think the same rules should hold true for the TV Hansard. When the Speaker deems that there is disorder he rises to his feet, and the cameras should zoom in on the Speaker. We can editorialize on the screen that the Speaker is on his feet calling for order because there are too many members talking at once or there is disorder in the House and he is calling all members to order--he is not calling one or two members. Very rarely does the Speaker call one particular member to order. That is very rare.

Mr. Martel: No.

Mr. Mancini: Just let me finish. When you look at the whole process, very rarely does he say on a regular basis--maybe not with you, Elie. I guess you are the exception.

I would hesitate to have the director of Hansard try to find where some of that disorder is, then focus on the Speaker and then editorialize on the screen. We have to realize that, even though our rules are the most progressive in the country and we want to make it as interesting as possible, we do have some limitations because of the cameras themselves. For us to try to get around those particular problems may cause problems that would otherwise not exist. I would say that before we start taking shots of disorder and giving credit to people who are causing disorder--

Mr. Chairman: That is the quandary. We are looking for a technique that explains why the Speaker is calling for order without giving undue credit to people who might be causing disorder. My suggestion, again, is that some standard wide-angle shot be used to indicate why the Speaker is rising to call for order, and then you move to a closeup of the Speaker.

The problem is just as Mr. Mancini has put it. We are not eager to provide an occasion where someone gets exposure by acting improperly, so we are looking for a technique that does that.

Mr. Mitchinson: We have two presentations that we are going to make here. One deals with the service to the hearing impaired, which we would like to get some direction on. The other deals with some information we have been able to pull together on the possibility of a spring coverage, and some of that relates to some of the things you have been saying, Mr. Chairman. I do not want to get into the second one if it means that we are not going to have time to deal with the first one, because we do want to get some direction on the hearing impaired.

Mr. Martel: The word "possibility" of starting it in the spring session worries me no end.

Mr. Mitchinson: We have a report on that.

Mr. Chairman: Let us get into the two of them. We have about a half an hour before we have the next witness appear before the committee, so let us proceed.

Mr. Mitchinson: We will do the hearing impaired one now?

Mr. Applin: Mr. Chairman, perhaps I should take you through the report and highlight the issues contained in it.

Mr. Chairman: Just for guidance, could you split this up so we have 10 minutes or so to deal with this one and then proceed to the second one?

Mr. Applin: Certainly.

We have spent some time investigating ways of providing service to the hearing impaired. The first part of the report, under section 2, on pages 2 through 8, tries to present some information on the characteristics of the hearing impaired and the issues that should be considered when looking at the two forms of television service that you can provide for them. One is signing and the other is closed captioning.

Let me briefly take you through page 2 onwards. First, it has to be understood that there are two different segments of the population when we talk about the hearing disabled. There are the profoundly deaf and the hearing impaired.

On page 2 we give you some characteristics of the profoundly deaf. They can be born deaf, in which case they typically do not read very well as a result of restricted education because of the lack of normal feedback that normal hearing people use to learn how to use language. They are most likely people who learn signing.

People who age through to deafness often lose their sight at the same time and rarely learn sign language. People who have become deaf as the result of an accident normally have a good understanding of English grammar and structure and are more often likely to use lip-reading than sign language as a way of communicating. In general there is an increasing trend to train profoundly deaf people to lip read rather than to use signing.

One last point: The profoundly deaf are typically in a lower income bracket than the hearing impaired.

By contrast to the profoundly deaf, hearing-impaired individuals span all age groups and all income brackets. They typically have a good working knowledge of grammar structure and they read well. They frequently deny their disability. By contrast again, they are in all income brackets but typically in higher income brackets, and from what we understand from the Canadian Hearing Society, they are often more active in a political sense than the profoundly deaf.

That is a very quick overview of the two segments in the population. Ten per cent of people in Ontario have some hearing disability; seven per cent are hearing impaired and roughly three per cent are profoundly deaf, so we are looking at a population of hearing impaired or hearing disabled people in the region of 900,000 in Ontario.

Mr. Newman: You said 900,000?

Mr. Applin: We can say 10 per cent of the population. There are 10 million people in the province, so it is not a small group.

There are two basic methods of communicating through television with the hearing impaired or the hearing disabled. I will use the term "hearing disabled" to cover both the profoundly deaf and the hearing impaired. One is signing, which is the one you are all familiar with, and the second is closed captioning.

Let me take you through some of the issues around signing. I think you understand what signing means. However, there is not one sign language. There are many variations between geographic regions within the province; there also is not one sign language that crosses linguistic boundaries, so there is a different sign language in French from that in English.

The Canadian Hearing Society estimates that about 20,000 hearing-disabled people can understand some form of sign language dialect, which means that only two or three per cent of the hearing-disabled population can understand sign language. One of the concerns among those who educate hearing-disabled people is that sign language is, in a sense, insular and it creates and fosters the sense that hearing-disabled people are different, so the trend is towards lip-reading.

The other point that should be noted is that sign language is very difficult to learn. It is not a simple representation of how we speak English using one's hands. The syntax and structure are different from those of English.

In addition, it should be pointed out that signing on television has never been particularly popular. We know that the federal electronic Hansard uses signing and the Public Broadcasting System has some signing on some of its programs, but it is not widely used.

11 a.m.

Let me deal with the technological issue of closed captioning, because this is the trend of the future as far as we are able to understand. Essentially, closed captioning is an encodation of the written word into the television signal; then at the television set it is decoded using a special device. Obviously, to be able to understand closed captioning you have to be able to read. If you are closed captioning live, it can require the ability to read up to 180 words a minute.

The Canadian Hearing Society prefers closed captioning. It feels it is a more progressive way of communicating. It also feels that the audience would be larger both now and certainly in the future. Research done by the agency has shown that decoders are often viewed by as many as four people at a time.

You should be aware--only briefly, however--that there are two technical forms called Line 21 and NAPLPS. The technology used by the Canadian Closed Captioning Development Agency encodes both of those systems into the signal at the same time, so it does not matter what decoder the person at the other end has.

You might be interested in knowing that Line 21 is the most popular method. There are at least 29,000 decoders in the province. Many have been brought in from the United States without being declared. They are around \$350 apiece. The NAPLPS system is much more comprehensive and technically advanced. It is used by the NBC network and by foreign networks, but not very much by Canadian networks. Its major drawback is the cost of the decoder, and there are very few of them in Canada.

Closed captioning is increasing. More and more television programs are being closed captioned, and they are now producing videocassettes with closed captioning on them. At the top of page 7 we give you some indication of the average number of hours per week of captioned television on the major networks available to most Canadians.

A study done for the Canadian Co-ordinating Council on Deafness, in which they surveyed hearing impaired people, showed that only 13 per cent preferred signing to captioning and that, of those who watched the parliamentary debates, 48 per cent did not understand the sign language interpreter.

Mr. Chairman: May I just stop you? That is rather disturbing, actually. Is that just a one-shot survey?

Mr. Applin: Yes. It was a survey done last year. The base was about 1,500 hearing-impaired people. It was a representative sample survey.

Mr. Chairman: It is rather self-defeating to provide a service where probably half the people for whom the service is designed cannot use it.

Mr. Applin: That was the point.

Mr. Chairman: Yes. Were there specific recommendations from this group about which process might be most successful?

Mr. Applin: The Canadian Hearing Society holds the view strongly that closed captioning is the preferred route to provide service on the televised Legislature.

Mr. Chairman: Is this the recognized group representing people with hearing impairments?

Mr. Applin: Of all the associations that represent the hearing impaired, and there are not very many, the Canadian Hearing Society is the one with the broadest mandate and the broadest membership.

The market for closed captioning is growing. That same study asked the question, "Are you intending to buy a decoder in the near future?" and 20 per cent said yes. The main problems are obviously the number of hours of programming that are closed captioned and the cost of the decoder; but as the technology becomes commercialized, the cost should come down.

You should be aware of the three ways of closed captioning. One is to do it in real time. In other words, if this were being televised and I were being closed captioned, somebody would be sitting there listening to what I say on a set of headphones and, using a computer keyboard in a somewhat similar fashion to a court stenographer, he would be using combinations of keys to represent the concepts I was getting across and the phrases I was using; then a computer program would translate that into words. So it is not typing every word I say. That is real time. There is a four-to-eight-second delay to allow for the intervention of the operator. The CTV news is done in real time.

Let me go the third one at the top of page 8. The other way is pre-broadcast, where you provide a tape of the program to the closed captioning development agency. They type in the words and give the tape back to you, and then you broadcast it. That normally takes a week or two to do.

The other way is what is called live display. That is a delayed process, but it is done using a stenographer who is not so experienced in the use of the equipment. The two-hour delay allows for corrections. It is important to understand that in-between process, because it could possibly be used if we were to closed caption the same day rebroadcast of House coverage.

Last, we turn to the issue of cost. It is clear that closed captioning is a much more expensive technology than signing. Appendix 1 at the end, and also the items of pages 8, 9, and 10, try to capture some of the cost issues.

If you wanted to cover the full House proceedings, signing would require approximately three interpreters working in 20-minute shifts. At the rate they presently charge out at, it is about \$100 an hour for the three interpreters. You would have capital costs--television camera and various electronic equipment to provide the signal back into TVOntario when they distribute it--of about \$140,000.

You would need a room in which to put the signer and the television equipment. If you cannot provide that room in the Legislature, there is some additional cost in providing it somewhere else and linking what is going on in the Legislature to the room and then the room to TVOntario, where the two signals would be merged. You would need a technician to operate the camera and the lighting.

Closed captioning comes in a variety of costs. The best cost for a long-term contract on real time closed captioning is \$3,000 per hour. If you delayed two hours--in other words, if you went to the live display format--costs could go down to as low as \$1,500 an hour. If you buy one hour without a contract, it costs you \$6,000 an hour.

The capital equipment to run the closed captioning is around \$14,000 to provide modems and links among the agency, the Legislature and TVOntario. It should be noted that people who are trained to do this are relatively rare. They are an expensive commodity.

If you turn to appendix 1 you get some sense of the cost structure in terms of capital costs and operating costs for the three approaches: signing, real time captioning and live display captioning. We have divided it into two components: the question period--by the way, that should read not "six hours/week" but "four hours/week"--the costs to provide it for the four hours a week of question period and the costs to provide full coverage for 20 hours a week. We base it on a 34-week year.

In summary, it is clear that closed captioning will reach a larger audience both now and in the future. However, the costs are significantly higher for both the government and the viewer, because the viewer has to buy a decoder. We have tried to come up with some cost per viewer. You will see from the very rough estimates that we have shown on the third bullet on page 10 that cost per viewer favours signing. However, you have to recognize that, on average, four persons watch each decoded television, so the costs can be reduced to about eight cents per person-hour.

It is possible for you to introduce signing now and captioning later. However, then you have the problem of how you take away signing.

Mr. Chairman: If it is acceptable to the committee, the member who raised this whole matter is Mr. Warner and he is not with us this morning. I would prefer, if it is possible, to receive this for information purposes today, and perhaps we could have a go at it a little later on.

It does occur to me, though, that there are some judgement calls to be made here that are a little bit broader than the work of the assembly being televised. The Ministry of Health may want to be a participant in that. Perhaps the networks or TVO might be interested in participating in something on this. I see such a range of options here that I am not sure we are in a position to make a decision now.

For example, if you wanted to take the question period and do the closed captioning on a delay basis--it is a reasonable and practical alternative to say that when TVO broadcasts the question period at 11:30 at night you have most of the day to do your closed captioning--you can probably do that at a fairly reasonable cost.

11:10 a.m.

The other thing that occurred to me is that I would not want to get us into a position where we made a recommendation to go to a closed captioning system that was very expensive, and then we heard from organizations in the field who said, "Listen, if you are going to spend \$1 million, we have other things we should rather see you spend the \$1 million on." It seems to me there should be some consultation involved there.

If it is acceptable to the committee, I would simply receive this report for information purposes this morning and schedule it for a bit of discussion later on. Is that agreeable?

Mr. Mitchinson: Yes. May I just make one point? That is a very reasonable approach to take on it. We should just point out that if we are going to implement this system, together with the overall system, we are going to have to have some direction from both this committee and the board as to which way we want to go, because it does impact on our equipment purchases--a camera for the signing people, the line installations for the closed captioning. So I would just put it in your mind that we would like some direction in the fairly short term on this.

Mr. Chairman: Okay. We shall assume that the report has been tabled with the committee and we shall put it on our agenda for consideration somewhat later.

Mr. Mitchinson: Perhaps Mr. Applin can just take you through his report as well.

Mr. Chairman: Sure.

Mr. Applin: This is in response to the request made two weeks ago by the standing committee on procedural affairs and agencies, boards and commissions to come back to you with an outline of a plan to cover the spring session.

The document begins by reviewing the schedule for installation of the permanent system. On pages 1 and 2 we outline the steps that have to be taken and the fact that we are planning for implementation of the permanent system by October 1986. Several elements affect and dictate that schedule to completion, and at the top of page 2 we outline these in some detail.

There is a six-month time period that we need to develop, test, manufacture and deliver the camera heads, the computerized system to operate the remote cameras and the audio system. That is one of the key factors that dictates the schedule to completion of the permanent system.

In addition to that factor we have the 14-week period to make the alterations to the chamber, which will be conducted during the summer recess.

Last, there is a regulatory schedule that we have to abide by in order to for TVOntario to get from the Canadian Radio-television and Telecommunications Commission the licence it requires to broadcast. We have now submitted the licence; the application has gone in. There will be a period of review and gazetting, then the hearing and a period after the hearing for the production of the final licence. It is unlikely that this will be completed until mid-June.

You are aware that during the four-week period at the end of last year we conducted a pilot test. What we are proposing as an approach to dealing with coverage in the spring session is an approach similar to the one conducted during the test period. If we cover the spring period, it will have to be on the same basis. We would have to engage a private production company to provide equipment and crew and have a contract with a television unit director to oversee the operations of that production crew and ensure it meets the requirements of the procedural guidelines.

The problem, however, arises with distributing the signal. Because we will not have a licence to distribute until near the end of the spring session, we will not be able to get province-wide distribution. It is possible, however, to distribute through the Metro area, perhaps reaching Mississauga and Scarborough, by hooking into Rogers Cablesystems Inc. Rogers could pick up direct feed from the temporary system without the requirement of a special licence in the same way as it covered the standing committee on social development in 1985. In addition, tapes and coverage of question period could be broadcast by TVOntario on a delayed basis.

Mr. Mitchinson: I will just expand on that a little bit, because Mr. Applin raised this at one time. The difference is that Rogers can get the feed directly and not from the satellite; therefore, the licence problem does not exist. It is only if you are getting it from the satellite down that it creates a problem.

Mr. Applin: We have estimated the costs of the spring session using the following assumptions. The session will last from the first Tuesday in April until the last Friday in June, which is a 12-week period.

Mr. Mancini: Are you sure about that?

Mr. Applin: That is an assumption. The costs for the rental of equipment will be on the same basis as we were able to negotiate for the trial period. However, we will not be using as many tape copies, and hence not as many tape machines, as we did in the trial period because we produced 12 or 13 copies then.

Because we will not have access to the room behind the Speaker's gallery where the Hansard equipment is now, we will have to use a mobile unit parked on the grounds somewhere. You may not be aware, but we are proposing to move into that room in April to

start construction of the permanent control facility. It will be vacated by Hansard by that time for that purpose, so it will not be available to the temporary system.

Exhibit 1 which is after page 5, gives you some indication of our best estimate of the cost of televising the spring session. It comes to \$240,000.

On pages 4 and 5 we complete this short paper by pointing out the advantages and disadvantages to the proposed approach. The obvious advantage is that you will be able to cover a spring session that you would not otherwise have been able to do.

However, it is important that we lay on the table some of the disadvantages. We will not have the permanent lighting system and the permanent audio system in place, and the output will be less than the optimum quality that we will be able to produce in the final system.

One other disadvantage is the limited distribution. It will be distributed through the Metropolitan Toronto area only. We will not be able to reach Ottawa, Sudbury, London or the big centres of population outside of Metropolitan Toronto. We will not be able to provide any enhancements such as French translation, signing or closed captioning.

Quite frankly, we are concerned that the project team dealing with the permanent installation will have to spend time making sure this project is running well and that it will detract to a certain extent from the efforts they are putting into designing the final system.

The final issue, of course, is one of cost. Whether it is high is really not for us to judge, but it will cost a quarter of a million dollars.

In exhibit 2 we indicate the difference between the permanent system and the temporary system in terms of the major features.

Mr. Chairman: I have a couple of quick questions. In the previous report you indicated that you had not resolved the lighting problems that you thought you had. Would there not be considerable advantage in televising the spring session on a test basis to finalize a lighting system before you put it in permanently? In other words, you are going to have to do some experimentation anyway. Is it not necessary to have some practical experience with this lighting?

Mr. Mitchinson: I understand what you are getting at. It is just that it is not practical to test that way. To do what the experts have recommended as the final solution costs as much to test as it does to install. So we will install that and then test and modify it from there, and there is not enough time during the break before April 1 to do that. We would have to go with essentially the same thing, the same glare problems and stuff that you have been experiencing.

Mr. Chairman: What would happen that would be different that would prevent Rogers from making this cable feed available to other cable companies? For example, when they televised the standing committee on social development, they made that feed available to cable companies around Ontario, most of whom were affiliated in some way with Rogers. So the broadcast of that was not province-wide by any means, but it did get into centres other than Metropolitan Toronto.

11:20 a.m.

Mr. Applin: We raised this question with Rogers when we met with them on Tuesday. They do have affiliates outside the metropolitan area and they would be able to connect into some of those. However, they were reluctant to commit to hooking into all of their affiliates.

We raised the question with them of whether they could hook into cable networks such as Maclean Hunter Cable TV and and Skyline Cablevision Ltd. in Ottawa, and the answer was no, that was not possible.

We also raised the possibility of hooking into their province-wide microwave system for distribution. They have no channel capacity left on the microwave system for doing that. We also raised the possibility of hooking into the CN-CP Telecommunications microwave system, and they are not technically set up to do that.

Mr. Chairman: So the answer is that we might be able to get a little broader distribution than just Metropolitan Toronto, but we have no assurances that we will get province-wide distribution or anything such as that.

Mr. Mitchinson: There would be no province-wide distribution.

Mr. Chairman: So if it went outside of Metropolitan Toronto, we would be dependent on a television station picking up a cassette and using it or something like that. However, you are saying that we would have no province-wide distribution system and we would have no real potential to get to that.

Mr. Applin: That is correct. Rogers would be able to cover Brampton, for example, I understand.

Mr. Chairman: Yes. So it would be kind of hit and miss.

Mr. Applin: It would be spotty.

Mr. Chairman: Are there any questions from anybody else?

Mr. Bossy: I am sort of concerned because there have been comments on this push for the spring session. My fears are that if we make that push and provide a feed to Rogers, a spot here or there, we are going to have more complaints because of the fact that we will be servicing Metropolitan Toronto again.

There are so many people who come to Toronto, whether for conventions or whatever, who will see it here. They will ask, "Why can we not see it there?" We will be trying to provide a service when we are not really not ready.

I am a great believer in doing things right. I believe we should meet our target of October, but we should do it properly from here on in. Give people the proper opportunity to analyse everything; get the proper people in place, because I am sure there is a lot of hiring to be done on this.

We should not be forced into a situation where we are plugging for the satisfaction of a few. It would be a discredit to this committee if we put pressure on to achieve this. We have a commitment that it is going to be done. To be reasonable, we must then set a reasonable deadline to have it done.

Mr. Chairman: Are there any other comments from members?

Mr. Treleaven: I am with Mr. Bossy. I do not see poking a quarter of a million dollars into Metropolitan Toronto. It is prejudicial to the rest of Ontario, to the real world out there beyond Metropolitan Toronto. How about you, Mr. Newman? What does Windsor say?

Mr. Newman: I agree with you to a certain limit. The centre of population is here rather than back in the Windsor area, so it is only natural to come along, have the roots start here and then spread into the other parts of the province. I do not think you can cover all Ontario overnight like that.

Mr. Martel: Quite frankly, I cannot follow what is going on. If we take the question period, at least, is it possible for TVOntario to carry that for three months?

Mr. Mitchinson: Live? No.

Mr. Martel: Is it impossible?

Mr. Chairman: Just to intervene for a second, I think TVOntario said they would have no problem carrying the rebroadcast or a taped version of it at 11:30, but they would not be able to carry a live broadcast until they had cleared the CRTC.

Mr. Martel: That answers my first question. That is important. If TVOntario wanted to carry it at 11 o'clock, then people beyond the confines of Toronto could watch it, could they not?

Mr. Mitchinson: Yes.

Mr. Martel: Right. Second, in areas like Sudbury and Windsor, the stuff said by the leaders is usually carried by most of the channels. If Mr. Grossman asks something, a company in Toronto, either the Canadian Broadcasting Corp. or someone else, carries it. It covers much of the province.

What the regional distributors resent--I have spoken to a couple of them recently--is that the present cameras pick up their marbles and go home right after the two leaders raise their questions. What they want is to get a feed in a hurry from the local input.

In other words, if I raise a question involving the cancer treatment centre in Sudbury, they want to be able to get a feed on that. They are small companies; they cannot afford to put permanent staff down here. What they want to be able to get from here in some way is a feed on the question raised by the local member because it is regional, not province-wide. Is it not possible to make provision from the outset that if Mr. Villeneuve raises something, one of the stations in Ottawa can get a quick feed from here that will cover the Cornwall area?

Mr. Villeneuve: We do not get TVOntario.

Mr. Martel: No, I am not saying TVOntario. I am asking whether one of the small television stations, who cannot afford to have staff here all the time, can get a quick feed to carry in the media two hours later. Question period is at two o'clock. They want to be able to pick up the regional stuff for their evening news. Could it not be made available?

Mr. Mitchinson: In a permanent system yes, they would pick it up off the satellite and they would be able to use it.

Mr. Martel: I am talking about the permanent.

Mr. Mitchinson: In the temporary system they have no facility, as I understand it, from somewhere like Sudbury or Windsor to access from Toronto TOC, which is the only place they could do it. So in the short term, no, they could not do that, shy of an actual courier of tape.

Mr. Chairman: We would be forced into a courier system of some sort, or one of the networks physically getting a tape here and rebroadcasting that, as they do with news items now.

Mr. Mitchinson: Yes. It would be the same as it is now.

Mr. Martel: That is the important thing. What they resent is that beyond question period and the leaders being covered, everybody else takes his bongo balls and goes home. The small channels in Sudbury, I am sure, and others in Timmins and so on, could arrange an agreement with the network they are affiliated with down here to get that through to them.

However, it is not being filmed. If that service were made available and if they were made aware of it, then at least local programming could carry what is being done by the local member. As you know, most of the time once the leaders ask their questions, they take their cameras out of the Legislature and go somewhere else. There is no local feed possible to Sudbury or Timmins. I suppose the same would apply to Windsor. The regional stuff does not get any coverage here.

Mr. Chairman: If I may intervene for a minute, Mr. Crispo is here. Since we basically received a report that says, "Yes, you can do it if you want to spend the money," it is essentially a cost item and the board itself will be the committee that decides on it. It is my suggestion that we receive the report and send it to the Board of Internal Economy. It will make the decision on whether it wants to spend the money. That is not really our ball park.

Mr. Mitchinson: May I make one final point? As far as the project team is concerned--and I do not think this came out so clearly in the report--we are very concerned with the quality of the product that will ultimately be delivered to the public. We are extremely concerned about that.

We are prepared to go with the temporary broadcast, but for the project team's purposes we feel that we have learned what we needed to learn from the trial. You made the points earlier about various techniques on coverage. You have seen highlights on today's tape.

We have taped coverage of four weeks that we can use to build our analysis of what kind of coverage is possible. We feel that our work is best directed at providing the best permanent system we can.

Mr. Chairman: Okay. In conclusion, then, I believe the same kind of edited version of the tapes is available to the caucuses if you want to have a session on it. Is a tape done for each of the three caucuses?

Mr. Mitchinson: We have not done them yet, but we are going to dub that one and provide it to each caucus, the Premier's office--the people who had it before, in a half inch so your tape machines can use it.

Mr. Chairman: Are there any further questions? There was some discussion that you would provide us with some further information on cost breakdowns as well. We can probably pursue that later and pick it up from you.

Mr. Mitchinson: I have a letter for you now.

Mr. Martel: Can the committee make a recommendation to the board?

Mr. Chairman: No. Thank you very much.

Mr. Martel: Is this committee not going to make a recommendation to the board on which one it wants to follow?

Mr. Chairman: No, it it is.

Mr. Martel: Why would that be?

Mr. Treleaven: On what?

11:30 a.m.

Mr. Martel: Whether we wait until the fall or go with the temporary.

Mr. Treleaven: Mr. Chairman, I wish to move that we not spend this type of money and go with a temporary system.

Mr. Chairman: Since we are not spending the money, that motion would not be in order. You can move a motion saying whether you want to recommend that the board proceed with it or not.

Mr. Treleaven: I move that this committee recommend to the Board of Internal Economy that it not start a temporary, ad hoc television program in the Legislature this spring.

Mr. Chairman: Do you want to deal with this motion now?

Mr. Martel: No, because we will have a long battle on this one.

Mr. Treleaven: The member for Sudbury East (Mr. Martel) wanted to discuss this recommendation.

Mr. Martel: We have a guest scheduled.

Mr. Treleaven: I move as an amendment to that that we defer this until after the deputant.

APPOINTMENTS IN PUBLIC SECTOR
(continued)

Mr. Chairman: Mr. Crispo is here and he wants to make a presentation on appointments in the public sector. Mr. Crispo, will you proceed?

JOHN CRISPO

Mr. Crispo: Yes. There are two things. I have some rough notes that I am going to use as a basis for my remarks. I am leaving them for you, and three other things that I will mention in a moment.

I want to start by welcoming the government's initiative in establishing this committee, and particularly for taking a close look at the patronage problem. You will see that I feel very strongly about it. I also want to thank you for the opportunity to appear. I apologize for not knowing you were in existence. I knew you were to be in existence, but I have been so busy that I was not aware you were actually around and functioning and well. So I appreciate the last-minute accommodation that was arranged.

I am going to be brief and to the point, but I am tabling three documents for your perusal. They overlap a great deal. If you want to read only one, you will not miss very much.

I discovered in my files an open letter never sent to the Prime Minister and the Leader of the Opposition during the last

election campaign. I do not even know why. I think I was trying to get the Globe and Mail to publish it and they would not. I think that was the explanation.

Then there is a brief article entitled "Reforming Patronage," which appeared in Influence magazine, and another paper entitled Freedom of Information, Patronage and Reform in Public Administration, which I delivered to the 1984 annual conference of the Institute of Public Administration of Canada.

I could have submitted other materials that would indicate that my concern over patronage in the public service goes back at least a decade. It goes back beyond that. In terms of speaking and writing on the subject it goes back at least 10 years.

I use some pretty harsh language here. I think it is appropriate, because my concern is about public confidence, faith and trust in our public institutions, and I think all of those things are being stretched by what I refer to as the most corrupt and sordid aspects of the degrading and demeaning one-party patronage system that has permeated the appointment procedures for most government agencies, boards and commissions. I think that is a nonpartisan--

Mr. Martel: You do not mean that.

Mr. Crispo: Actually, it is understated because my secretary said the first version was too strong and might even be libellous.

It is nonpartisan. I am proud of myself. I have not mentioned the present Tory administration in Ottawa, which makes the former Tory administration in this province look clean. I have not said anything about the new administration here in this province, which so far is looking all right, but I see signs of trouble coming. I think they have finally discovered there are some Liberals to be rewarded in the province. When they won the--

Mr. Treleaven: Define "all right."

Mr. Crispo: No, I had better not.

At least they have not engaged in a couple of token appointments from other parties and then gone to the trough for every other appointment, and I hope the present government means what it says when it says in establishing this committee that it wants to do something.

There is more than one response to this problem. I am sure you are reviewing a whole host of ways in which we can get at the patronage problem. I suggest a couple of responses in the documents that I have appended. I really want to elaborate on only one, and that is a variation on the Austrian model for appointing the board members of what we term crown corporations. They have other names for them.

I have been over there twice, and when I first went, I could not believe what I had come across. As you may or may not know,

Austria has a higher proportion of crown corporations than most other countries because after the war it inherited the works of the Third Reich, which included a massive steel company, a massive chemical company and a number of others that had no previous owners. There was nobody to give them back to, so they fell into the public domain.

I am not going to talk about the labour members. It happens that at least one third of corporations in Austria under their co-determination system are labour members. I am not interested in them. I am talking about the other two thirds who are the so-called public members. They are appointed by the governing and opposition parties in proportion to their representation in parliament.

I have been impressed with this system from the first time I came across it. My first inclination was to ask myself, "How do they ever get anything done?" It is just like the assembly trying to run Ontario Hydro. I thought: "God bless me! We have enough problems with Hydro without letting the assembly run it"--no aspersions on any of those present.

I told them, "This system cannot work," and I was invited back to look at it at some length and I was extremely impressed by it. That is because there are two major advantages. First, and I state it here as clearly as I can, it changes the party incentive system when they are trying to figure out whom to name to public agencies, boards and commissions, instead of the usual collection of--I call them what they are--bagmen, cronies and hacks. You might add has-beens.

You do not do that any more and you cannot do it any more, except by cynical agreement with the other party. You are capable of a lot of things but I do not think you are capable of that. Maybe you will prove me wrong if you ever try this.

Instead of the usual assortment of characters, both parties in Austria--you are talking about the People's Party and the Social Democratic Party; the People's Party is the Tory party; I love that: they call themselves the People's Party--but there are the two parties--

Mr. Chairman: It is kind of like Progressive Conservative.

Mr. Crispo: Or social democratic. Or New Democratic Party, as if they had just discovered democracy. We could do a number on all of your names. Liberals do not know what "liberal" means--there is a problem with all of these names.

Mr. Martel: The proletariat.

Mr. Crispo: All right, the vanguard of the proletariat.

My point is that under this system, instead of the usual types of characters whom parties name, both parties go out of their way to name competent people. They are their people. You cannot get rid of patronage; I have come to the conclusion you

just cannot get rid of it. Apparently people will not work for democracy unless there is a potential payoff, and so you people feel you have to reward the flocks.

Mr. Mancini: That is not true.

Mr. Crispo: I hope you are right. If you can do it, God bless you. I am suggesting a way in which you can come at this problem and change the incentive system within the party.

Mr. Mancini: We were in opposition for over 40 years and we still had thousands of people work for our party, volunteer, when they knew many elections ago and in advance of many elections that there was certainly no pot at the end of the rainbow. Having served in the opposition for more than a decade and now that I have been in government for almost a year, I can assure you that I have not had any lineup whatsoever at my door of the people who worked their hearts out in order to help me get elected.

There are some people who really want to work for the party, and I believe they are the vast majority who do not do that only to get a job.

Mr. Crispo: I am not arguing with you. I would say that if that is true, you should turn all these appointments over to the Civil Service Commission. We do not need you.

Mr. Martel: They are finding the money easier to come by these days as a political party.

Mr. Mancini: I am just saying it is not all that way. There are good people who work for other reasons.

Mr. Chairman: I understand you were being provocative there.

Mr. Crispo: I am easily provoked, and so is he. So are you.

I hope you appreciate the first point: It does change the incentive system. Second, and I think this is even more important, it turns these public bodies, whether they are agencies, boards or commissions, into bodies that are not solely beholden to the party in power because all of their board members come from that party; rather, they are more likely to consider the opposition party.

However, more important to me, they are going to be more responsive to parliament and to the public at large. That is extremely important.

For those two reasons, this is an approach that is worth looking at, but not in every area that you will be taking a look at. I am talking about agencies, boards and commissions.

I used to ask when the Liberals had been in power for so long in Ottawa, "Could Air Canada and Canadian National possibly be any worse off with a few Tory nominees as well as Liberal nominees?" I used to ask in Ontario, "Could Ontario Hydro possibly

be any worse off with a few Liberal nominees as well as Tory nominees?"

11:40 a.m.

At this point somebody is going to ask, "What about the NDP?" When you are in the opposition, you will get your crack at it; you are out west, so you get your crack out there. I will be very blunt about that. Explaining these things three ways gets to be absurd. I talk about the government and the opposition party.

Anyway, the other one that comes to mind, and I have not mentioned any of the things I attached--and I am sure you are probably looking at--

Mr. Martel: There goes my appointment.

Mr. Villeneuve: You are government, Mr. Martel.

Mr. Crispo: I am not sure who is Premier at times, but I do not want to get into that.

We have Bob Rae speaking at the university at a conference I am running. He is talking on free trade, so I know it is going to be arrant nonsense, but we know what he is going to say. But I wanted to subtitle it "A Pseudo-Premier's View." He said, "No, we cannot use that." I said, "Well, acting Premier?" "No, none of that. Just an NDP view." I do not know who is running the place.

The other thing you are probably looking at is some sort of committee review. This is what himself up in Ottawa has been talking about. This was promised months ago, but there are no jobs left to be reviewed. I am hoping he has run out of friends. There is that possibility, too.

I am speaking of some sort of parliamentary review similar to the Senate review in the United States. I still think what I am talking about is better, but that is another possibility. I am just categorically stating that here is one I think is really worth looking at. There are all sorts of other things you can do, but this has such fantastic advantages in terms of the incentive system and making these bodies more responsive to the wishes of parliament and of the public at large that I really think we should give it a try.

Nowhere else has it been tried. Why, I do not know. That is really my message to you. Do something different, build it into the law and you will have something that, at least on a trial basis, would be worth a run at. I myself think it would work wonders. I can speak with some authority because it has had that kind of affect in Austria.

Mr. Treleaven: Professor, what is your response--

Interjections.

Mr. Crispo: I have always been called doctor and I want to extra bill, so do not call me "doctor." You can call me "professor."

Mr. Treleaven: We have reverends who will not be called "reverend" and now a professor who will not be called "professor."

Mr. Crispo: I prefer John, but I do not believe in titles.

Mr. Treleaven: How is Jack? I am from Oxford.

What is your response when I say to you that if you line up all these agencies, boards and commissions and split the boards, government and opposition, you are automatically putting into place a situation where one side of that board comes out and says X, the other side will automatically say it is Y? If one says it is black, the other will automatically say it is white, because it has the government-opposition mentality. Each side will feel it is its duty to oppose the other automatically to put up the opposing view.

Mr. Crispo: I am not going to say there is none of that in Austria; that would be foolish. However, there is not much of that in Austria.

Austria is a different country. It is small, it is homogeneous, it is a kind of democratic corporate state. There are lots of reasons why you might argue that what works there would never work here.

However, I think you are assuming that partisan politics--and here I am going to sound more reasonable than I usually do--has to govern everything. It is amazing what happens in Austria. When people are put on the board of their big steel company--two thirds of the stuff has to go abroad--they think of that company and they want it to run well because it is in the interests of Austria that it run well.

I am not going to say they totally drop their political affiliations, but quality people are being named, not just people who have been fighting loyally in the trenches forever and are so partisan they cannot think of anything else. These people rise above that where it is appropriate to do so and they think of the agency, board--there are only boards over there. In terms of your references, let us call it "the board in question."

I hope we are not at the point--I know there are lots of signs that we are at the point--where there is no way people from different political parties can work together in the common good of something like Ontario Hydro or whatever you want to talk about. I concede your point that at times there is going to be a majority opinion and a minority opinion, but I still want to give this a try. I do not want to assume the worst about people's motives once they are asked to take on something like this for the right reasons, not just as a reward for years of loyal service.

Mr. Martel: I disagree with my friend, because one looks at a housing authority, there are appointees by the federal government and there are appointees by the provincial government to housing authorities, and yet the housing authorities--the ones I have dealt with, anyway--work it out.

The other place you want to look at is select committees of the Ontario Legislature. When you are not in the camera's eye, it is surprising how much agreement you can get in a select committee that is studying a particular problem. Everybody is a lot more flexible than he is in the Legislature when he is working on a committee. That is important.

Look at England. Heaven forbid, the Tories back-benchers kick the hell out of the government because they do not trust the civil servants.

Mr. Treleaven: You just said it: in the camera's eye and out of the camera's eye.

Mr. Martel: But they are not in the camera's eye. Most of these are not in the camera's eye. You never even hear of most of the work of the various boards, agencies and commissions. The important thing is that you might get a different perspective instead of than just mouthing, whatever government is in power, what they want. That is important.

I was making the point that in England the government members, because they just do not wait in the wings to get to the cabinet--they are not all going to get there no matter what happens--you find that the government back-benchers are as hard on the government as is the opposition party.

I would argue one other point with Mr. Crispo, though. I listened to him recently on free trade, and he did not ask the question where all the jobs were going to come from in free trade. As I listened to that great debate of his one night on radio, he never did say, as no one else was saying, where we are going to get the jobs. That is one of the reasons we do not buy a pig in a poke. I just threw that comment in.

Mr. Crispo: You should have a committee on free trade so you would--

Mr. Chairman: We have one. We do.

Mr. Crispo: Yes, I appeared before that one. I keep forgetting.

Just to elaborate on your point on select committees--not the free trade point; some time I will try to penetrate your thick skull on that one, but it is going to take more time. Remember, these are easy issues. We had unanimous reports in Ottawa--I think they were unanimous--on immigration policy and on prison reform. They are not the most partisan issues, but you cited housing. You could cite a lot of the agencies, boards and commissions that we have in this province where there is a job to be done and it does not always have to be partisan.

I do not dismiss your point. There are going to be occasions when she is going to blow up and you are going to have a division on party lines. I hope there would be other occasions when you would have divisions that were not on party lines, just because people have a different concept of the merits of a decision, which way it should go.

Mr. Chairman: We certainly thank you for livening up the session this morning and for appearing before us. We would be very happy to take your views under consideration when we write this report.

Mr. Crispo: Okay. I will look forward to its being the number one recommendation in your report.

Mr. Chairman: We do have some organizational business we would like to transact this morning, so I do not think we will need Hansard for that. We can just deal with those.

The committee considered other business at 11:48 a.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES, BOARDS
AND COMMISSIONS

APPOINTMENTS IN PUBLIC SECTOR

TUESDAY, MARCH 4, 1986



STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES, BOARDS
AND COMMISSIONS

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Staff:

Eichmanis, J., Research Officer, Legislative Research Office

Witnesses:

De l'Association canadienne-française de l'Ontario:

Plouffe, S., président

Lengyel, C., relations gouvernementales

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND
AGENCIES, BOARDS AND COMMISSIONS

Tuesday, March 4, 1986

The committee met at 10:12 a.m. in room 228.

APPOINTMENTS IN PUBLIC SECTOR

Mr. Chairman: We are ready to begin. We have before us this morning two representatives of l'Association canadienne-française de l'Ontario. Serge Plouffe is the president. Catherine Lengyel is the director of government relations.

Just to explain a little bit to you, we try to keep it as informal as we can. We have translation services available this morning. We would like to give you an opportunity to make a presentation and then give the members an opportunity to ask questions. Please proceed.

ASSOCIATION CANADIENNE-FRANCAISE DE L'ONTARIO

M. Plouffe: Merci beaucoup, Monsieur le Président, et merci également aux membres du comité d'avoir accepté d'entendre notre présentation aujourd'hui. J'apprécie également le fait que vous ayez rendu disponible l'interprétation simultanée afin que je puisse m'adresser au comité législatif en français.

Pour ceux d'entre vous qui ne connaissent pas notre organisation, j'aimerais dire, très brièvement, que l'Association canadienne-française de l'Ontario existe depuis plus de 75 ans. C'est une association ontarienne qui regroupe 22 associations régionales et 17 associations affiliées. Le mandat de l'ACFO est de promouvoir le développement et l'épanouissement des francophones de l'Ontario et de se faire le porte-parole officiel de leurs intérêts.

J'aimerais, si vous le permettez, revenir rapidement sur quelques données du mémoire que nous vous avons présenté, pour ensuite m'attarder sur le processus de nomination comme tel.

Comme vous le savez sans doute, les personnes de langue maternelle française représentent environ six pour cent de la population de l'Ontario. Dans le Nord et le Nord-Est de la province, les francophones constituent près de 30 pour cent de la population; dans l'Est, c'est plus de 15 pour cent. Pourtant, selon les données obtenues selon les listes actuelles, il semble que moins de un pour cent des positions au sein des agences, commissions et conseils du gouvernement sont comblées par des francophones.

Ceci veut dire que premièrement, un segment important de la population de la province n'est peu ou pas du tout représenté au sein du processus gouvernemental de consultation; et deuxièmement, que des régions entières du territoire de l'Ontario ne sont pas représentées d'une façon qui reflète leur caractère distinctif.

Comment expliquer cette situation? En grande partie, très certainement, la faible représentation des Franco-Ontariens et des Franco-Ontariennes provient du fait que, comme population, nous ne faisons pas partie, traditionnellement, des réseaux de pouvoir. Le "old boys network" d'antan a fait qu'aujourd'hui, de nombreux segments de notre société, si diversifiée, ne trouvent pas encore leur place au sein des instances décisionnelles.

Antérieurement, le gouvernement ne voulait pas nommer tellement de Franco-Ontariens ou de Franco-Ontariennes aux comités parce que la perception qu'il nous donnait ç'aurait été d'admettre que le fait français en Ontario était une réalité. Alors, on n'en a nommé que très peu, à des commissions qui n'étaient pas tellement visibles, et ces gens venaient des milieux que j'ai cités tantôt, du Nord et du Nord-Est, également de l'Est de la province.

Sans vouloir minimiser le mérite des gens qui participent présentement au pouvoir, plusieurs d'entre nous qui occupons un poste décisionnel s'y retrouvent un peu par accident. En effet, l'administration n'a jamais mis en place des moyens efficaces pour solliciter et faciliter la participation des francophones de cette province.

Il existe un autre facteur, plus subtile peut-être, mais qui décourage quand même un bon nombre de nos gens de vouloir participer de façon plus active au processus. Je parle ici du "tokenism", ou de la représentation strictement symbolique.

Trop souvent, les quelques francophones siégeant à ces conseils deviennent des symboles qui ont pour effet de donner une bonne conscience politique à ceux qui les ont nommés. C'est à ces francophones qu'incombe alors la tâche de représenter les besoins et aspirations d'une population d'un demi-million de personnes et de jouer constamment le rôle de chien de garde de la francophonie. Ce n'est pas un rôle que beaucoup d'entre nous veulent assumer pendant très longtemps. Certains le font, et avec beaucoup de sérieux, malgré l'ingratitude de la tâche.

Mais un changement d'attitude s'impose. Les francophones devraient être reconnus pour la compétence qu'ils possèdent dans le domaine relevant du conseil, de la commission ou du comité en question. C'est cette compétence et cette expérience qui devraient être mises à contribution, plutôt que leur aptitude à représenter leur groupe d'origine. Leur statut de Franco-Ontariens leur donne un point de vue original, des connaissances, des perceptions qui enrichissent les débats relatifs aux questions étudiées. Ils ont une contribution particulière à apporter qui n'est certes pas négligeable et que le gouvernement devrait s'efforcer d'aller chercher.

Mais malgré toute notre bonne volonté, et malgré toute la bonne volonté du gouvernement, le mécanisme de sélection ne peut demeurer informel. Certains nous suggèrent de suivre continuellement les dates d'échéance des différents postes et de soumettre des noms au moment approprié. D'autres nous disent de faire parvenir tout simplement des curriculum vitae sur une base régulière aux différents ministères.

Pour nous, ce ne sont pas des solutions au problème, car comme association, nous n'avons tout simplement pas les ressources humaines et financières nécessaires pour assurer un suivi adéquat à ce niveau.

Pourtant, il faut assurer une plus grande place aux francophones de l'Ontario. Le problème n'est pas, comme on tente de nous dire si souvent, le manque de francophones qualifiés. Mais plutôt, le problème en est un de manque de mécanismes appropriés d'identification des francophones qui soient qualifiés. Pour cette raison, nous recommandons deux mécanismes très simples et peu coûteux qui pourraient être initiés par le gouvernement et que j'aimerais reprendre ici:

Premièrement, que les postes à combler soient annoncés dans les médias de langue française, et ceci au moins un mois avant la nomination. Je pourrais laisser à M. le Président et au greffier une liste de tous les hebdomadaires, des journaux en Ontario français qui le couvrent du Nord au Sud, de l'Est à l'Ouest, chez qui on se ferait un plaisir de mettre les annonces du gouvernement de telles nominations.

Deuxièmement, que les responsables des nominations reçoivent le mandat de solliciter, par tous les moyens, des candidatures en provenance de la collectivité francophone. Encore là, je crois que vous avez, comme gouvernement, des mécanismes en place déjà pour identifier des Franco-Ontariens et des Franco-Ontariennes. Il y a, par exemple, l'Office des affaires francophones. Il y a également des secrétariats que vous avez: le secrétariat pour les handicapés, le secrétariat pour les femmes, des secrétariats pour une multiplicité de groupes qui, eux, pourraient avoir la responsabilité justement d'identifier des gens.

Nous pensons qu'il est temps de mettre en place de tels mécanismes afin de permettre à nos deux solitudes de se rencontrer plus souvent. Soyez assurés que l'ACFO contribuera volontiers, dans la limite de ses moyens, au succès de cette entreprise. Monsieur le Président, chers membres du comité, je vous remercie beaucoup.

10:20 a.m.

Mr. McCaffrey: I have just a fast comment. When time permits, Mr. Chairman, if there were an opportunity to respond, I would like it.

With regard to the last suggestion on the secretariats, it has been pointed out quite correctly that there are secretariats for the disabled, the elderly and so on. I submit, having had some experience in this, that the establishment of a secretariat to speak to the important matters that you put before the committee would in no way address the fundamental problem. I am prepared to hear some other facts on this and to hear your reaction to it, but from my experience, it would really just shuffle the problem aside. The secretariats do not work as the paper would indicate they should work; the concept does not work. They provide a forum for people, admittedly, but what we want is action and muscle. In my experience, the secretariat system weakens the case.

M. Plouffe: Ma connaissance du fonctionnement des secrétariats c'est le simple fait qu'ils peuvent travailler avec les groupes qu'ils représentent. Ils ont certainement à identifier des gens qui sont compétents soit dans le domaine du vieillissement, ou dans celui des personnes handicapées ou des femmes, et qui par la banque de noms qu'ils ont au secrétariat, peuvent identifier au gouvernement les francophones compétents pour siéger aux comités en question.

Nécessairement, il faut que les comités soient en relation avec l'expérience ou la région d'où proviennent ces gens. C'est seulement le mécanisme; je ne dis pas que le secrétariat devrait ouvrir toutes grandes les portes et faire uniquement ça, ou faire surtout ça. Il a déjà en place des listes des personnes qui oeuvrent dans le milieu selon leur spécialité et il peut transmettre l'information à ceux et celles qui ont la responsabilité de nommer des gens.

Mr. McCaffrey: I respect that. This is my last comment, because I do not want to overdo this. I am trying to find some vehicles that would be constructive, and this is a vehicle; there is no question about it. But my practical experience tells me that there is a tendency when they are established, not just in this jurisdiction but also in others, for the problems and challenges to get hived off to another group instead of being dealt with.

It is not something that can be compartmentalized. It is the compartmentalization of the problem that we are trying to address, and that is equally true for the handicapped and the elderly. The very government itself and every one of the ministers of that government has to be equally committed to it, not feeling that one of his colleagues has this under control. That is hiving it off, in my experience.

I wish I had a more constructive suggestion, but I just wanted to share my two cents on that one.

M. Plouffe: Je respecte beaucoup les commentaires du membre du comité et je respecte quand même le fait que l'on peut facilement déléguer cette responsabilité à un secrétariat et on le tient maintenant responsable, mais ce n'est pas du tout l'intention que j'avais en offrant cette suggestion. Il y a quand même tout le mécanisme, la volonté que l'ACFO a aussi à vouloir, par un truchement, vous offrir les noms de personnes qui seraient aptes à y siéger. C'est vraiment une collaboration que je cherche et non pas juste du dumping de responsabilités.

Mr. Warner: I would like to get some idea of the dimension of the problem of lack of representation elsewhere than in the ministries. I am particularly interested in and concerned about what I would loosely call the cultural area, such as public boards representing the Royal Ontario Museum or the Art Gallery of Ontario and so on--that type of board. To your knowledge, how much Franco-Ontarian representation is there on those cultural boards?

M. Plouffe: A ma connaissance, au Musée royal de l'Ontario, qui est juste ici, la plupart des représentants sont des gens de la région immédiate de Toronto. Je ne pense même pas

qu'il y ait un francophone qui siège à ce comité-là. Serait-il possible? Ils sont 16 et je trouve que si on prend cet exemple-là, on est certainement sous-représenté. C'est une situation idéale, surtout dans un musée, où on a quand même à avoir un input comme communauté.

Si je prends également d'autres exemples de nature provinciale, encore là, dans le domaine culturel, au Conseil des arts de l'Ontario, où littéralement on se bat pour avoir un ou deux représentants, même là il y a un comité de fonctionnaires qui s'occupent du côté francophone, mais au Conseil comme tel, il y a très peu de représentants. Ils concèdent toujours parce qu'ils prennent pour acquis que, parce qu'il y a du folklore et du culturel, c'est un domaine dans lequel la communauté franco-ontarienne est un peu plus sensible; alors, on va en nommer quelques-uns là.

On ne cherche d'autres endroits que le culturel également. A TVOntario, au comité du Conseil d'administration du Bureau de direction, il y en a deux--un certainement, probablement deux--qui sont francophones, quand on sait que TVOntario, avec le nouveau programme et la nouvelle expansion de services qui s'en viennent, va offrir des services bilingues à part entière, mais il n'y a quand même pas de francophones qui prennent des décisions à ce niveau-là.

On pourrait citer plusieurs exemples; nous en avons identifié dans le mémoire que nous avons présenté au début avec deux annexes indiquant ceux qu'on croyait des emplois clés pour commencer. On ne veut certainement pas que les francophones soient identifiés uniquement dans un domaine en particulier, surtout celui culturel. C'est-à-dire que nous sommes citoyens à part entière dans cette province. On n'est pas seulement en train de faire des chansons et d'organiser des soupers aux beans.

On veut quand même participer dans les endroits que nous avons identifiés dans l'annexe A. On comprend surtout les domaines de santé, de services sociaux, d'éducation tant au niveau post-secondaire qu'au niveau élémentaire; et non seulement dans les organismes à caractère provincial mais également dans les régions, dans les milieux où on a sur pied des conseils consultatifs dans le domaine de la santé, celui des services sociaux et ainsi de suite. On veut avoir une représentation à ce niveau-là aussi.

Mr. Warner: Yes, I understand that and I certainly would agree that there should be representation in services and in every board, agency and commission representing the province. I specifically raised the cultural aspect because it seems to me extremely important that every cultural entity that purports to represent the entire province--the museum is supposed to be the Royal Ontario Museum; it is not a Toronto museum, and therefore it has a responsibility to reflect all of the province.

Mr. Martel: It has a bridge on one side of it.

Mr. Warner: That is the concept of it. If you want it to be a Toronto museum, then you should say so.

Mr. Martel: That is what it is.

10:30 a.m.

Mr. Warner: In that type of situation it is absolutely critical to have Franco-Ontarians represented as well as to have a geographic representation. However, I agree with you that there has to be a mandate to have a Franco-Ontarian on every board, agency and commission that represents the government. There is no question about that.

M. Morin: Dans le passé, de quelle façon étiez-vous informés des positions qui étaient offertes?

M. Plouffe: C'est une bonne question, et d'ailleurs c'est le problème auquel on doit faire face. Souvent, les nominations étaient non seulement perçues comme politiques mais étaient carrément politiques dans la plupart des agences, conseils et commissions. Plus souvent qu'autrement, nous n'étions pas informés, comme association, des postes disponibles. Tout se faisait en sourdine et finalement, tout à coup, on s'apercevait qu'un tel avait été nommé là et on ne savait pas comment; on n'était pas du tout impliqué dans le processus. Encore là, comme je le disais tantôt, ces nominations venaient parce que le gouvernement antérieur avait très peu de représentants francophones et finalement on avait très peu de nominations qui venaient, dépendant de l'ardeur et de la volonté de ces députés.

M. Morin: Est-ce que vous faisiez certaines pressions vis-à-vis de certaines agences du gouvernement de façon qu'il y ait des candidats francophones de nommés?

M. Plouffe: Oui. Il faut dire que le Conseil des affaires franco-ontariennes, à ma connaissance, a toujours été assez impliqué dans ce processus, mais on soumettait des noms et ces noms aboutissaient nulle part parce qu'on se retournait de bord puis on nommait un anglophone.

M. Morin: Il n'y avait absolument aucune consultation?

M. Plouffe: Non, pas avec notre association. Je trouvais ça un peu désastreux.

On ne veut pas être consulté dans le sens de: "Préférez-vous un tel ou un tel?" Mais on veut être consulté dans le sens de: "Voici une ouverture, est-ce que vous avez des noms à suggérer?" Puis on saurait que nos suggestions vont être prises de façon très sérieuse, non pas juste pour consultation et pour se soulager la conscience politique.

M. Morin: Est-ce que l'Association serait intéressée ou prête à créer une espèce de banque de noms à laquelle le gouvernement aurait accès, ou encore peut-être vous-même accumuler une liste de noms et les soumettre au gouvernement avec leur curriculum vitae? Je sais que vous y faites allusion un peu dans votre présentation, mais seriez-vous prêt à le faire d'une façon encore plus claire, plus précise?

Il y a, je crois, au-delà de 500 agences et commissions dans la province. Question de coûts aussi: le coût de la publicité dans les journaux est énorme. Il y aurait ce véhicule dont on pourrait se servir; il y aurait aussi peut-être le véhicule de votre association. C'est-à-dire, trouvez-nous les noms des candidats. Vous obtenez une liste à mesure des postes qui sont offerts et vous soumettez des noms à l'attention du gouvernement, en plus de noms que nous, comme hommes politiques, accumulons.

M. Plouffe: On répond que oui, on est très intéressés, mais le problème, c'est un problème de main-d'oeuvre, chez nous dans notre association. C'est-à-dire que trouver et maintenir une banque de noms à des postes qui, on ne sait pas, si on n'est pas informé, quand ces postes vont être disponibles, c'est difficile. Pour trouver les candidats, il faut au moins les interviewer une fois. Il faut être certain qu'ils ont un curriculum vitae; ce n'est pas tout le monde qui a un curriculum vitae disponible.

On ne veut pas avoir accès uniquement à une élite non plus. Il faut avoir accès à des personnes qui sont quand même aptes et connaissantes mais qui auraient intérêt à siéger au comité en question, et ça demande beaucoup de temps et d'énergie. On est prêt à faire notre part, mais on se dit que le gouvernement a également une responsabilité à nous donner un coup de main là-dedans. C'est pour ça que je parlais tantôt d'un mécanisme d'entraide pour identifier ces noms et créer une banque.

On a justement demandé à nos dirigeants membres, lors du dernier conseil provincial, d'identifier trois noms, juste trois noms pour commencer, d'individus dans le milieu qui seraient prêts à siéger aux conseils, commissions et agences. Ces noms commencent à entrer chez nous. On va peut-être avoir une banque d'une centaine de noms.

Mais inviter quelqu'un pour le Conseil des gouverneurs des collèges d'arts appliqués et de technologie et dire: "Il se peut qu'il y ait une ouverture, mais on ne sait pas quand", eh bien, la vie personnelle de chacun, on peut promettre, on voit six mois à un an... Mais si on nous avise que dans deux mois il y aura une ouverture disponible et de chercher du monde, c'est concret, c'est réaliste, cette démarche-là. On sait, nous, que notre suggestion va être écoutée.

Mais si on nous demande seulement des noms pour des noms et on n'est pas certain du temps où ils vont être nommés, parce que je trouve, personnellement, que même lors de l'ouverture du poste disponible puis de la nomination effective, il y a deux ou trois mois entre les deux. Alors, les personnes attendent, attendent, attendent et finalement elles se trouvent autre chose; elles ne sont plus disponibles.

Mais je crois, pour répondre de façon très spécifique à votre question--

M. Morin: Quelle suggestion faites-vous en réalité?

M. Plouffe: Nous sommes prêts à mettre à la disposition du gouvernement les noms qu'on va accumuler. On aimerait voir, de la volonté du gouvernement, qu'eux aussi aient des noms et qu'on puisse les regarder ensemble et dire: eh oui, c'est une bonne liste. Il y a ici cinq, 10 noms qu'on envoie au comité; on est d'accord avec ces noms dans le sens que ce sont des personnes aptes à y siéger. Finalement, il y a une collaboration entre les deux. Cela, on est prêt à le faire.

M. Morin: Merci.

Mr. Bossy: This is just a short question. Are you aware that within the last few months this matter was tabled in the House so that everyone has access to who is on the boards, agencies and commissions? Information is now available that never was before. It should be valuable for you to sit down, or to have a committee within your organization that sits down and looks at the areas of direct concern to Franco-Ontarians.

It may be that not everyone will want to sit on every board across Ontario, but where you feel you should have direct input you could identify them from the books that have been tabled describing the agencies and boards and also identifying who within your area is currently sitting on them. I do not know whether your organization has the book on it. I am sure it has access to it.

M. Plouffe: Ce commentaire est très pertinent. D'ailleurs nous avons identifié deux annexes. Dans ces annexes, nous avons sorti, parce que l'information était devenue publique, des endroits où on aimerait avoir, comme communauté, des représentants. Je prends les cas d'organisations telles que Agricultural Council of Ontario, Advisory Committee on University Affairs, Ontario Council on University Affairs, Children's Services Review Board--enfin, toute une liste où, à l'heure actuelle, on est sous-représenté ou même pas du tout.

Mr. Bossy: But within that you can identify when these positions terminate, because the termination date of the appointment is there. That information is now available.

M. Plouffe: Mais c'est là qu'est la difficulté, parce que c'est quand même un travail massif de pouvoir toujours examiner ce qui s'en vient. On n'est pas tout informatisé à l'heure actuelle pour sortir ça. C'est un peu là que sont mes préoccupations au niveau de l'entraide entre le gouvernement et nous autres: quand on peut sortir des endroits clés et comment assurer le suivi de ça. C'est un peu ça qui est difficile, parce que ça demande beaucoup d'énergie, ces affaires-là, en fait de personnes et de main-d'oeuvre.

Mme Lengyel: Si je peux ajouter quelque chose, c'est impossible pour nous de suivre constamment ces cahiers-là avec le peu de personnel et de ressources que nous avons. C'est pour cette raison que nous avons identifié des domaines prioritaires et nous aimerions que, basé là-dessus, le gouvernement puisse aviser l'ACFO et la communauté des nominations qui s'en viennent dans ces domaines, ce qui ne serait pas une tâche trop difficile, nous pensons, pour le gouvernement.

L'autre chose que je voulais ajouter c'est en réponse à la question de M. Morin de tantôt. Depuis que nous avons rédigé le mémoire, lorsque nous rencontrons différents représentants des divers ministères, nous les distribuons. En ce moment, c'est le processus qui existe tout simplement, qui est: "Oh, isn't that interesting. By the way, there is a position coming up for tomorrow. If you have any names, please submit them."

Alors, c'est un processus impossible. Il n'y a rien d'autre en termes de mécanisme pour assurer un bon input de la communauté francophone en termes de noms.

Mr. Bossy: The members are not ahead of you, because we have the same kind of demand--that tomorrow we should have some names--so you are in the same position as most members are.

10:40 a.m.

M. Plouffe: C'est une forte raison d'améliorer le système.

M. Bossy: Il faut changer ça.

Mr. Chairman: I wonder whether I could pursue a couple of points. You made a bit of an attempt in a previous submission to the committee to say: "Here is a group in which there should be some francophones immediately. Here is another group of agencies where there should be some in the near future."

Are we on reasonable grounds to say that this is a reasonable way to proceed, that there would be a targeted group of agencies on which it would make some sense to have francophone representation but that for the 2,000 other agencies it is less important?

We are trying to target which agencies would get some francophones. I do not know whether it would be a special status, but we would be trying to sort out agencies that really ought to have francophones on them and others where it is of less importance. Is that a reasonable way to proceed?

M. Plouffe: Pour nous, oui. C'est exactement ce que nous avons fait dans notre mémoire initial. C'est qu'on a procédé à identifier des endroits clés qui reflètent non seulement les priorités de notre association mais également les préoccupations que nous avons pu identifier dans notre communauté dans le domaine du travail, du vieillissement, des jeunes, de la culture, de la santé, des services communautaires et de l'éducation. Ce sont des secteurs que nous trouvons essentiels, et je crois, de façon logique et rationnelle, que si on commence à être très sérieux avec cette approche, on va établir un processus qui va répondre à nos besoins.

Mr. Chairman: Let me try to go on to something a little more pragmatic. We are wrestling with the concept of how we would, in the first place, get together name banks of people who would be good appointments no matter what the agency. They would be well qualified in their field; some would perhaps have an interest in a

particular agency and not in another. I take it you are very interested in participating in putting together some kind of name bank concept in the francophone community. Do you want that to be a very formal thing?

M. Plouffe: Pouvez-vous expliquer davantage ce que vous voulez dire par "formel"?

Mr. Chairman: We are wondering how to do this. I personally have had all kinds of suggestions from hiring. There are now businesses that do this. They will do job searches. In the corporate world they are called headhunters. They find the person who fits the job and they run all of this on computers. When I phone in, they punch out a little computer list and mail me a list of 18 applicants who would be good for this job. Someone on my staff interviews the 18 people, and we come up with it.

Are you thinking you would like to run that kind of operation? You would keep a list of 3,000 francophones in Ontario who would be really great on agencies, and every time the government of Ontario wanted to make an appointment, you would fiddle with the computer and out would come a list of 10 francophones who would be good for this agency. Is that the kind of thing you want?

M. Plouffe: Personnellement, je crois que ce serait un système qui pourrait être efficace, mais c'est compliqué. Cela pourrait être une façon, premièrement, de dépolitiser les nominations; et deuxièmement, de s'assurer que dans la banque de noms il y a une mise à jour des noms et que, parce que là on va identifier exactement dans quel domaine ils ont intérêt à siéger ou à participer, on peut ressortir les noms des gens que l'on veut réellement, non pas juste si on veut quelqu'un en agriculture et on prend quelqu'un du domaine culturel parce que c'est un bon bonhomme, on va le mettre là quand même. On ne rend pas service à personne.

Je pense que ce serait un système peu compliqué, mais ça se fait où on met en banque des noms de façon systématique et professionnelle; on informatise toutes les données, on les sort et, d'après moi, c'est plus objectif et plus sûr d'avoir quelqu'un qui va servir de façon efficace le comité ou l'agence en question.

Mr. Chairman: Just to show you some of the problems we have with this, in a sense you would be the depoliticizing agency. The government of the day would probably say: "This is a nomination that is proposed by a francophone organization. Our hands are clean."

The problem we have had with this is that, in other agencies we have looked at, something not very dissimilar is occurring. When we reviewed the Ontario Racing Commission, for example, we found it a little unusual that on the racing commission are a number of people who are really involved in racing. They breed horses, race horses and have a lot of connections with the racing industry. The argument then becomes, "We want people who know something about racing, so we pick people who are part of the horse-racing industry."

The problem is that these same people are still active in that field. They are, in a sense, regulating themselves and they were in fact giving themselves fairly substantial grants to breed better racehorses. They were writing the regulations under which they personally would operate, so there was a little bit of a conflict.

It would not be quite the same with francophones, but there would be a little problem in there that we would have to resolve.

M. Plouffe: Je ne pense pas qu'on puisse attribuer le même mécanisme de contrôle au niveau des Franco-Ontariens, parce qu'on ne veut pas effectivement contrôler une agence plus qu'une autre. On ne veut que donner un input qui va servir à améliorer les services ou les contrôles, les lois et ainsi de suite pour le gouvernement en place.

En ce qui a trait à l'annonce de certains postes, je suis d'accord avec ce qu'on disait tantôt. On ne peut pas annoncer les 3,000--je ne sais pas combien il y en a exactement; il se peut qu'il y en ait 3,000. Mais peu importe le nombre, on ne peut pas les annoncer à chaque fois. Ce n'est pas pratique.

Il y en a quand même là-dedans que vous-mêmes pouvez identifier comme des éléments clés. Je prends un exemple: le Conseil des gouverneurs des collèges d'arts appliqués et de technologie. C'est clé, ça; on sait que c'est important. Le Conseil des affaires universitaires, on sait que c'est important. A ce niveau-là, on pourrait faire des annonces par les médias qui donnent non seulement l'impression mais aussi une assurance qu'on dépolitise ces nominations parce qu'on veut des gens qui soient compétents dans le milieu.

Alors, je crois qu'il y a moyen de s'organiser pour identifier des endroits clés. Pour mettre l'emphasis là-dessus, je sais qu'il y a des commissions, des conseils et des comités ad hoc qu'on forme; il y en a un quasiment toutes les semaines. Mais ce n'est pas important que sur chacun on ait un francophone. Là on va retomber dans le "tokenism" encore, parce qu'on va vouloir embarquer après ça une femme, on va vouloir embarquer un handicapé, on va vouloir embarquer un autre. Finalement, on va aboutir à un comité qui ne répond pas au but pour lequel on l'a mis sur pied.

C'est une collaboration qu'on est prêt à faire avec le gouvernement dans l'identification de ces conseils, comités, commissions. C'est important pour nous. Absolument, on croit quand même que--je regarde la liste encore--dans le développement du Nord de l'Ontario, c'est certain qu'on a intérêt à servir là.

Au sujet de la Commission des transports du Nord de l'Ontario, s'il y a un endroit où non seulement ils sont de même là au niveau des services bilingues, il n'y a absolument aucun francophone qui siège là-dessus. Ce n'est pas normal, parce que le plus gros du service est dans le Nord de l'Ontario, de North Bay à Thunder Bay. C'est un endroit clé pour nous.

Alors oui, on veut y participer; oui, on est prêt à identifier les endroits clés, et une banque centrale de noms, que vous avez suggérée, pour moi, ce serait une réponse idéale à ce problème, parce que nous pourrions continuer à fournir des noms qui sont informatisés et, après ça, eh bien, on sait que les noms vont être retenus.

Mr. Chairman: Let me pursue one other practical problem. We have wrestled with the idea of how we inform, give notice and all of that. I appreciate the suggestion from your point of view that one or two months' notice or whatever would certainly help. The problem is to extrapolate that into every group we have out there. Because there are so many agencies, it very quickly becomes a real problem. It is not insoluble and not totally impracticable, but it is a little complicated when every group wants to be notified two months in advance.

10:50 a.m.

I can conceive that this could happen, but, for practical purposes, would it resolve the problem if, say, once a year the province did what municipalities do--that is, give public notice that: "Here are all the agencies. We are looking for people to serve on them. Anybody who is interested should give us a list of names"?

Maybe we could go to a name bank concept after that and say, "We want a francophone to serve on this board." Instead of getting a month's notice that there is a job on an agency, would you consider it acceptable to be given an annual notice that these are all of the agencies to which appointments will be made this year and to be asked for your recommendations in that regard? Is that an alternative that is acceptable?

M. Plouffe: Je trouve ce que vous venez de dire excellent comme idée qui faciliterait pour nous la tâche. Encore là, si on avait la liste, on pourrait éventuellement établir des priorités à l'égard des agences et trouver des personnes. On leur dit: "Ce genre de travail est disponible. Es-tu intéressé?" La personne va nous dire oui ou non. On n'a pas de temps à perdre, il faut trouver quelqu'un. Alors, c'est beaucoup plus pratique, cette façon-là.

D'ailleurs, je sais que la ville de Toronto procède comme ça et des gens se présentent à des réunions. Ils sont parfois 50 ou 75 à donner leur nom pour deux ou trois places. On voit qu'il y a un intérêt. Alors, c'est certain que ce genre de processus est bien reçu dans mon association, et ce serait clair. On sait la liste qui est devant nous; on n'a pas à se creuser la tête tous les mois pour savoir qui s'en vient et quelle sera la prochaine surprise. Je trouve ça une excellente idée.

Mr. Chairman: I have one final point. A few people have made representation to the committee about whether people are doing a good job on agencies, and it has occurred to us that there is very little review of the actual work of an agency, certainly not very much in a formal way.

This committee reviews them; a few other committees of the Legislature take a look at them from time to time. But in a sense, unless the chairman of the particular agency chooses to do some kind of performance review, formal or informal, once people are appointed, it is game over.

Is that something we should be concerned about? In other words, should we try to provide some mechanism to review the performance of an individual appointment or of an agency in general? How important is that to you?

M. Plouffe: C'est comme n'importe quel groupe qui est mis sur pied. Peut-être on a peur de les évaluer parce qu'on s'apercevrait qu'on en a mis sur pied et que ça ne valait vraiment pas la peine, qu'on perdait son temps.

Comme association, je crois que tout ce qui est mis sur pied doit absolument aboutir. Il y a une tâche à accomplir: il faut qu'il l'accomplisse. L'évaluation du travail qui est fait, on ne s'est vraiment pas attardé à examiner ça. Une fois qu'on l'a nommé, qu'est-ce qui arrive après? C'est vraiment la responsabilité, d'après moi, du ministère dont relèvent ces agences ou ces commissions, du président du comité à s'assurer que le travail est fait. Mais instinctivement il faut qu'il y ait une révision, il faut qu'il y ait un résultat qui soit rendu public à un moment donné. Alors, on peut évaluer après ça, selon le résultat qui va nous être donné, le travail accompli.

Mr. Chairman: One of the things we have picked up is that it is a lot of people's responsibility to review the work of agencies; the problem is that not very many people are doing it.

Are there any other questions from the committee?

M. Plouffe: J'ai fait un commentaire par rapport aux listes. Quelle est la difficulté? Je pense que c'est le trésorier de la province qui a présenté les listes de ça, mais elles sont disponibles à un endroit et on ne peut pas les photocopier; il faut les copier à la main. Quel est le problème de rendre ces listes publiques, au moins ce qui existe puis le travail qui est fait, au moins pour avoir une idée? On n'est pas en mesure d'aller les copier; c'est gros de même, cette affaire-là. Est-ce que c'est possible de rendre ça public, au moins ce qui existe comme conseils et agences?

Mr. Chairman: One of the things that has been done, and it is a first in the history of Ontario, is that it has all been put in these two lovely binders, which are available. The problem, as most of us see it, is that I do not think there are very many folks in the province who are aware that those two binders exist and that they are available.

What we have looked at in other jurisdictions is a publication that is put in everybody's library, high school, town hall or whatever--in some places it is called the plum book--which lists all the agencies, when appointments are made, what the per diems are and all of that. I think it is reasonable that the committee at least consider an expansion of the publication, since

the information is now public material. It then becomes a matter of disseminating that information. That is not exactly a gigantic step. We will probably get around to it.

Mr. Warner: The problem of which you spoke--trying to find out which agencies, boards and commissions exist--is one that frustrated many of us for a long time. Until recently it was impossible to find out the names of these agencies, boards and commissions. Members of the assembly could not find out, let alone the general public. So it has become a great revelation, and the problem now, as the chairman says, is to get that information out, around and about and no longer to have it a well-hidden secret.

From my standpoint in preparing a report I would like to be able to document the dimension of the difficulty that has traditionally faced the francophone community in Ontario with respect to participation in the public interest.

Twice you mentioned the colleges and universities. Can you provide a bit more information for me about the scope of the representation by francophones on college and university boards throughout the province, more particularly in those communities that we know have anywhere from a 40 per cent to a 60 per cent francophone population, like Timmins, Cornwall and so on? Can you give me some idea of what, historically, has been the representation by francophones on the boards of colleges and universities?

M. Plouffe: Là, je vais parler de deux endroits: Ottawa et le Collège Algonquin des arts appliqués et de technologie, et plus précisément le Collège Northern des arts appliqués et de technologie, parce que je suis natif de Timmins et je connais très bien cette situation.

Au niveau des collèges communautaires, ça a pris à Timmins, d'abord, le fait que les nominations étaient quelque chose que le gouvernement cachait, comme dans un jeu de cartes; on ne connaissait pas du tout s'il avait des as ou seulement des deux. Alors, ce qui est arrivé c'est qu'on ne connaissait pas les nominations qui étaient d'abord ouvertes, mais on savait que c'était politique et que, la plupart du temps, c'étaient des anglophones qu'ils nommaient.

Beaucoup de pressions, encore plus des circonstances, ont été mises sur le député en place pour avoir des francophones. Finalement, on a commencé à en avoir. Au fur et à mesure, on s'apercevait que ce n'était pas "in" que de faire du "bashing" sur les francophones. Là, eh bien, on commençait à chercher des gens qui avaient une plus grande ouverture d'esprit. On nommait des francophones.

Au bureau du gouverneur du Collège Northern, il y a plusieurs francophones. On a ouvert toute une série de programmes pour répondre aux besoins des francophones du Nord. Alors, par le fait même, il fallait avoir des administrateurs qui comprenaient la mentalité des francophones, et on nommait des gens.

Au Collège Algonquin récemment, le mois passé même, on vient d'identifier quatre francophones qui font maintenant partie du bureau du gouverneur. Cela ne s'est jamais vu dans le passé. On en a eu un ou deux, et un ou deux parce que les règlements ou les statuts du collège forçaient une nomination qui venait des comtés de Prescott-Russell. Alors, on sait qu'à Prescott-Russell, ça va être francophone la plupart du temps. Mais en dehors de ça, pour moi-même, les municipalités environnantes envoyaient toujours des anglophones. Là, on vient de nommer quatre choix, et c'est excellent.

Si je m'amène maintenant au niveau provincial des collèges et universités, le Conseil des gouverneurs, ça fait pitié un peu. On en a un et on ne veut pas qu'il soit fort et trop connaissant de la situation pour pas trop brasser les affaires. C'est un peu le problème qu'on avait aussi. On nommait des francophones dont on était certain qu'ils étaient un peu mollos, parce qu'on ne voulait pas qu'ils brassent la marde. Excusez, mais c'est un peu l'expression. On ne les voulait pas trop forts.

Je pense que la mentalité de nos jours s'éloigne de ça et on n'a pas peur d'avoir des personnalités fortes pour siéger à des conseils qui sont tellement importants pour notre communauté. Cela prend des gens forts et compétents qui vont amener des idées nouvelles. Il y a encore des nominations. On sait qu'elles sont disponibles au Conseil des gouverneurs, mais on n'entend parler absolument de rien.

Pour les universités, c'est pire. On n'est pas dans ce monde du tout. Les seules universités où il y a vraiment des gouverneurs francophones sont à Ottawa. A l'Université de Toronto, ça me surprendrait beaucoup. A l'Université York, ils en ont l'intention, parce qu'ils veulent se proclamer bilingues éventuellement. Alors, à l'Université York, ils ont demandé de leur donner des candidatures, de donner des noms de personnes qui seraient aptes à siéger au bureau des gouverneurs. Alors tranquillement, ça s'en vient, mais le Conseil des affaires universitaires est une entité par laquelle on est approché rarement.

Mr. Warner: Okay, I appreciate that. There are a couple of things this committee presumably has a responsibility to recommend. One is an open process, one that is understood by the public and one in which the public can participate. As far as I am concerned, with respect to Franco-Ontarians it means that, obviously, in communities that have a large francophone population there is an obligation for representation to be there.

However, it seems equally important that in communities where there is a smaller, maybe even a minute Franco-Ontarian population, there is a responsibility to have a representation because we live in a bilingual country. That representation is very important. My area is in Toronto. In Metropolitan Toronto there are a lot of Franco-Ontarians, but they are spread throughout the metropolis.

However, it is very important that every one of our public institutions here have Franco-Ontarian representation because of

the fact that we do live in a bilingual province and a bilingual country. That has to be recognized in our structures. It cannot be tokenism; that is wrong. It has to be the right person for the job and someone who is going to contribute. We have a responsibility to make that happen.

Mr. Martel: In Timmins, for example, are you represented on the housing authority or on the hospital boards? I have had my troubles in Sudbury with appointments to the board of the Cambrian College of Applied Arts and Technology. They ignore the representation made by the labour council and even that by the city of Sudbury and the regional municipality of Sudbury. Their nominations are totally ignored.

What percentage is the representation? Timmins is 55 per cent francophone. Do you have 55 per cent of the representation on all agencies, boards and commissions?

M. Plouffe: Non. C'est clair.

M. Martel: Ce n'est pas égal.

M. Plouffe: Ce n'est pas du tout égal. Ce n'est peut-être pas dans la juridiction provincial, mais récemment la ministre fédérale de l'Emploi et de l'Immigration, Mme Flora MacDonald, a demandé à chaque député fédéral de former des conseils consultatifs locaux pour l'emploi. Il faut communiquer avec chacun des députés fédéraux pour s'assurer qu'il y aura des francophones à tous ces comités consultatifs. Même au niveau fédéral, ce n'est pas encore acquis.

Pour revenir plus précisément à Timmins, ils discutent, à l'heure actuelle, d'un hôpital régional et il faut littéralement se battre pour s'assurer qu'il y a des représentants francophones au comité qui est en train de mettre sur pied cette étude ou de continuer l'étude pour voir la faisabilité de cet hôpital.

A l'Hôpital Ste-Marie c'est cocasse. Il y a deux ans, quand il y a eu des ouvertures, l'ACFO et les francophones du milieu se sont organisés pour avoir des représentants. Vous savez des cartes de membre; c'est \$1 ou \$2 chacune et ça ne prend pas de temps que ça se vend. C'est une autre affaire un peu bizarre.

Mais on a rempli la salle, comme d'autres le font, et on a élu du monde. L'année passée, quand le processus est revenu--parce qu'il y a une rotation qui se fait--la population anglophone pensait qu'on allait faire une campagne également, et là il y en avait 900 qui se sont présentés dans la salle pour élire des représentants. Ils pensaient que les francophones allaient réagir encore.

On n'a rien fait, parce qu'on avait nos représentants là-bas, mais cette année au mois de juin, au mois d'avril ou mai, on recommence le processus, et c'est ridicule. Ce n'est pas un processus qui est sain pour une communauté, parce qu'on la divise. Dans un conseil de santé d'un hôpital on devrait dire: "On a 15 représentants. On a une population anglophone et francophone de tels pourcentages. Voici, sur les 15, il y a huit francophones." Et ça finit là.

Si on va avoir à se débattre annuellement pour avoir des représentants, c'est un déchirement communautaire. Là, la municipalité embarque dans le jeu. Les politiciens au niveau municipal sont inquiets de ça, parce que ça polarise les conseils.

Ce n'est pas du tout acceptable, je pense, qu'on puisse continuer de cette façon. Il faut démocratiser les nominations: on devrait assurer des places. C'est certain que si on va de cette façon, on va savoir exactement qui recommander, quitte au gouvernement à faire le choix final. Je respecte ça; il n'y a pas de problème du tout. Mais de là à provoquer des communautés à se soulever, là j'ai des problèmes.

Mr. Bossy: I do not like to ask questions that are too highly political, because it has never been like me to do this.

Mr. Martel: You are not a political fellow.

Mr. Bossy: No, I am sort of nonpartisan.

Mr. Martel: You should run as an independent.

Mr. Bossy: The members who are sitting on the procedural affairs committee are really nonpartisan.

However, I cannot help asking this question. Through the years northern Ontario, the main francophone area of Ontario, has been blue, blue, blue but has never had any services given to it.

Mr. Sterling: Where did you get that idea?

Mr. Bossy: Why would they have supported the former government when they never had any action from the government?

Mr. Chairman: You can take the fifth amendment.

Mr. Bossy: I thought it would add a little spice.

Mr. Martel: The federal Liberals did not care a hell of a lot more, either. That is why there are so many agreeing up there. We will see. The Liberal government had its tokenism, too.

Mr. Bossy: I will argue that one. I knew that would really--

Mr. Chairman: Just to help out.

We thank you very much for your submissions to the committee and we appreciate the fact that you took the time to come here this morning. We are now going to proceed to draft the report. We would be interested in any further comments you would like to make to the committee, and we will be interested in your response to the committee report when it is done. We hope it will be prepared, at least in some stage or other, for the beginning of the spring session or roughly in that time frame.

Mr. Plouffe: I have just one last comment. I know your hearings were finished and I really appreciate the fact that you

made an exception for us and that you also provided the translation.

Mr. Chairman: We were very pleased to do that.

M. Plouffe: Je vous remercie de vos commentaires et de l'intérêt que vous portez à ce sujet. Je trouve que les questions ont été très intéressantes et je suis convaincu que le rapport va refléter les préoccupations qui ont été mises de l'avant ce matin.

M. le Président: Merci.

If members wish, we can adjourn now and come back at 2 p.m. We have some bits and pieces of organizational work, some decisions that have to be made this afternoon. I do not believe we will need a Hansard for that.

Mr. Bossy: Mr. Chairman, I noticed that you used the earphones very little, so I must congratulate you for your grasp.

Mr. Chairman: I had to use the earphones only when Martel spoke.

The committee adjourned at 11:10 a.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES, BOARDS
AND COMMISSIONS

APPOINTMENTS IN PUBLIC SECTOR

WEDNESDAY, MARCH 5, 1986

Morning Sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES, BOARDS
AND COMMISSIONS

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)
VICE-CHAIRMAN: Mancini, R. (Essex South L)
Bossy, M. L. (Chatham-Kent L)
Martel, E. W. (Sudbury East NDP)
McCaffrey, R. B. (Armourdale PC)
Morin, G. E. (Carleton East L)
Newman, B. (Windsor-Walkerville L)
Sterling, N. W. (Carleton-Grenville PC)
Treleaven, R. L., (Oxford PC)
Turner, J. M. (Peterborough PC)
Warner, D. W. (Scarborough-Ellesmere NDP)

Clerk: Forsyth, S.
Assistant Clerk: Mellor, L.

Staff:
Eichmanis, J., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS
AND AGENCIES, BOARDS AND COMMISSIONS

Tuesday, March 5, 1986

The committee met at 10:14 a.m. in room 228.

APPOINTMENTS IN PUBLIC SECTOR

Mr. Chairman: I call the meeting to order. Let us go over this again. In the mandate of the committee is the power to examine and report on the methods by which it believes appointments should be made to agencies, boards and commission to which the Lieutenant Governor in Council makes some or all of the appointments and all corporations in which the crown in right of Ontario is a majority shareholder.

That would cover 2,444 appointments and would exclude judges. The terms of reference are clear on the exclusion side and on the actual numbers.

Mr. Martel: Does that number include things at the municipal level, such as hospital boards?

Mr. Eichmanis: I counted every single appointment in these two volumes. My count is 2,444, plus or minus where I may have gone wrong.

Mr. Chairman: The criterion is where the appointment is made by a Lieutenant Governor in Council or corporations in which the crown in right of Ontario is a majority shareholder. That is the definition.

Mr. Martel: That is why I raised it.

Mr. Chairman: Those are the terms of reference that we have.

Mr. Martel: I am just trying to get clarification. I would think that might not include hospital commissions--

Mr. Chairman: It would include things such as a health council. It probably would exclude things such as a local hospital board, unless for some reason the province makes the appointment by order in council. For example, most hospital boards--not all, but most--are elected by a group of local people who are members of the hospital association.

Mr. Turner: Most of them have a provincial representative as well.

Mr. Chairman: Yes; where there is a provincial representative appointed by a Lieutenant Governor in Council--

Mr. Treleaven: Oh?

Mr. Chairman: Each board is different.

Mr. Treleaven: None of mine has any provincial representation.

Mr. Turner: Then they had better get their constitutions updated.

Mr. Martel: That is what I am trying to clarify. There is also something called a housing authority; it is in there too. I am just trying to get a broader range off the top.

Mr. Eichmanis: If the board of a hospital includes some provincial representation, I have included those.

Mr. Martel: Fine, thank you.

Mr. Chairman: The first stage we might take a shot at is to identify officers of the House and officials who report to the House; that is, someone who has what is considered to be a somewhat unique relationship with the assembly. On page 2 of John's report, he goes through them.

The only question you would want to sort is: How far down the list does one want to go in reviewing these appointments? These would be the ones where there would be more than just a review of the appointment--in other words, because they are officers of the House, that they might actually be appointed by the Legislature itself, which is how it happens in theory--where you would probably be entertaining thoughts of moving more towards the kind of recommendation we made around the Speaker, for example.

There is the Clerk of the House, the first clerk assistant, the Sergeant at Arms, the administrator and the executive director of the library. Then, as a second tier, there are people such as the Ombudsman, the chief election officer, the chairman on the Commission on Election Contributions and Expenses, the Provincial Auditor and commissioners of the Ontario Electoral Boundaries Commission.

In that group, or people such as that, you could very easily say there is a category of people where the Legislature itself should do the appointment process, as the theory has it we now do.

Any comments or suggestions on this? Do you want an expanded list, an abbreviated list or what?

Mr. McCaffrey: Just a fast question; I am not sure whether we are be able to have an answer here. I know the theory as to how the Speaker has been considered (inaudible). We all know that, and that is not a question. I do not want to get into the first clerk assistant either, because that is problematic. However, since you have been here, Elie, has there been a tradition regarding the Sergeant at Arms? Put theory aside for a moment.

Mr. Martel: I never figured that out. I assumed the latest Sergeant at Arms, like the one before him, was simply hired by the Speaker.

Mr. McCaffrey: In isolation, unannounced.

Mr. Martel: The Sergeant at Arms was hired totally without anyone's knowledge.

10:20 a.m.

Mr. McCaffrey: Not to belabour this, but on the Ombudsman, is there anybody in a position to tell us exactly what the practice has been? Did the three leaders chat regarding Dan Hill?

Mr. Chairman: Yes. Informal consultation would now be the expectation on everyone's part for all these categories. It would get a little more formal with table officers, for example, where the Board of Internal Economy and the Speaker would take a more direct role.

What you might do with this kind of stuff is say the government would retain the right to nominate someone for a position such as Ombudsman, but we would like the standing committee on the Ombudsman to go through a ratification process.

Mr. McCaffrey: I understand.

Mr. Chairman: As an alternative, you might say--

Mr. Morin: Do you mean the Ombudsman committee would have the interview?

Mr. Chairman: Can I just lay out the two or three scenarios of what you might do?

Mr. McCaffrey: Let us stick to what has been happening. It will help me and I think it will help others.

Mr. Martel: There was informal consultation on Dan Hill. There was informal consultation on Morand, probably less than on Hill. Because Morand ran into trouble, there was somewhat more consultation on Dan Hill, at least informal discussions to ensure everybody was on side.

Mr. Chairman: In all that are in these two categories, the process now used is that the government takes the initiative in suggesting someone; it does so after consulting with the opposition leaders. Then there is a process where the Legislature, in theory, formally approves the appointment when the motion is put.

Mr. McCaffrey: My last question deals with what it has been like. In the recollection of anybody here, has there been an example, be it chief election officer, Ombudsman, Provincial Auditor or whatever, where at the first call by the government to the opposition leaders, there was no way they were going to go with him? Has there been--you know what I am getting at.

Mr. Chairman: Has there been kind of a veto?

Mr. McCaffrey: Yes.

Mr. Chairman: No. The truth is that there is consultation early enough on this stuff that, if a short list of two or three people is proposed, nothing gets very serious until there is agreement that one person is satisfactory to all three parties. The Provincial Auditor would be the exception; by statute, there is a requirement that the chairman of the committee be consulted for that.

Mr. Martel: I have been around for a little while. Outside of the Ombudsman, I can recall no discussion on the chief election officer--

Mr. McCaffrey: What about Stephen Lewis?

Mr. Chairman: Yes.

Mr. Martel: No. But the chief election officer--

Mr. Turner: That was done internally, was it not?

Mr. Chairman: Yes.

Mr. Martel: To my knowledge, it was not done with the leaders involved.

Mr. McCaffrey: We have to know--

Mr. Martel: It was done for the Ombudsman. We were advised Gordon Aiken was going to be appointed; we were not consulted. I do not think there was any consultation with us at all on Archer.

We were advised on the commissioners on the Ontario Electoral Boundaries Commission. Mr. Turner will recall we tried to get the commission increased; we wanted three more people on it. We wanted someone from each of the political parties in addition to those appointed by the government.

In fact, there is very little consultation on anything except the Ombudsman. Even for the first clerk assistant, which we have been dickering over for the past two years, the Clerk has been attempting to get, by appointment, a first clerk assistant. I say that among these four walls. Up to the time I left being House leader, we argued no, if there was going to be a first clerk assistant, it was going to be the board and not the Clerk of the House who was going to make the appointment. Mr. Turner was there when we agreed to that.

With respect to the administrator, there was absolutely no discussion with anyone about Fleming, I guess because he was the first one.

There has been very little consultation on any of these, except maybe on the Ombudsman.

Mr. Chairman: My judgement would be that there has been more consultation than in previous years. We have gone from a

situation where literally nobody had any input into it. These things kind of came up through the ranks and ascended into another position, to the point where there has been consultation and some discussion at different agencies. However, it is not very formalized. Mr. Turner, you had a point.

Mr. Turner: The points that have been discussed are the very points I wanted to talk about. As we go through the list, to confirm what everyone else has said, there has been little if any consultation as far as the Legislature is concerned. There have been informal discussions at the top level, but that sure as hell does not involve the rest of us. That is wrong.

Mr. Chairman: If you wanted to, this would be the place where it would seem quite natural to say that consultation is fine in terms of finding candidates. However, the standing committee on the Ombudsman, for example, should have every confidence, as a committee, in that person; there should be a public expression of support for the nomination.

Whether you want to have the committee search for applicants or whether you want to continue to have the Office of the Premier do the actual nominating and the committee doing the subsequent review, you would be in real trouble if you had an appointment for an Ombudsman, for example, and that appointment could not be sustained in a committee of the House that was charged with the responsibility of reviewing his performance.

Mr. Turner: Very much so.

Mr. Martel: Mr. Chairman, on a point of order: Could we deal with them as two groups? There is a difference in the grouping. There is a vast difference between how it is achieved in group 2 and in group 1. I do not think anything in group 1 should be done without the consent of all members of the House.

Mr. Chairman: You do not mean a veto for one member?

Mr. Martel: No. I am saying it has to be by election or something. The day and age of the way Mr. Bosley, Mr. Stokes or Mr. Turner was picked is gone. Mr. Turner would be the first to concur that the Speaker's job is hard enough that it would probably be better for the Speaker if he were picked by his peers, who would then have to live with him. Part of the hostility around a Speaker is not deliberate, but because the government has chosen him. I would like to split those two groups and deal with them differently.

Mr. Chairman: Could we consider this distinction? In the first category, the officers of the assembly, since they are directly employed by the assembly itself, would be appointed by a committee of the assembly, which would put a motion to the assembly recommending that someone be made the Clerk of the House, the first clerk assistant or the Sergeant at Arms.

In the second category, you would allow the Premier to make the nomination, which would be reviewed by a committee of the assembly, and then a motion would be introduced.

Mr. Turner: That is right.

Mr. Bossy: In our last report concerning the Speaker in the House, we felt that the Speaker did not have enough power and that there should be more powers assigned to him. This is where it comes about. Surely he should be directly involved in appointing the people who are going to work under or with him.

Mr. Chairman: The other side of the argument is that although it is very important that the Clerk of the House works with the Speaker, for example, it is also very important that he is seen by all members as assisting them.

Mr. Turner: Yes.

Mr. Martel: You can add one sentence to what we have. The Speaker should be a member of any committee that is doing the selection.

Mr. Morin: If not chairman.

Mr. Turner: He should be at least a member.

Mr. Martel: Yes. He must be a member of the committee that is going to make the recommendations.

Mr. Chairman: One of the difficulties we would have would be to move from an old system, which has not been used in quite a while, to a newer system. For example, it would mean that someone would either have to advertise for these positions--which is surely not beyond the pale--or take the initiative to nominate people for these positions or something such as that.

Do you want some recommendation that incorporates the Speaker in that part of the process or do you want the Speaker to simply sit with a committee of the Legislature?

Mr. Martel: That would make him a member of the committee.

Mr. Bossy: He should be an ex officio member of it.

Mr. Chairman: He is. He is a member of the House; so he is on any committee he wants to be on.

Mr. Bossy: That is right. He should be on any committee.

Mr. Chairman: We want a recommendation that spells that out. The anticipation from our point of view is that the Speaker would be a participant with the committee in this process.

Mr. Morin: I would state it a little stronger than that. The Speaker should be the chairman of the committee. He is there to consult with his colleagues as to the ability of those candidates to fulfil the job.

In the final analysis, the Speaker is the one who oversees the responsibilities. We know the problems he is currently facing.

We are limited in the space we have. We have been invaded by civil servants. The Speaker should use the committee members as advisers to help him find good candidates. However, he should have the final say. He works with these people.

Mr. Chairman: No.

Mr. Morin: Let me finish and you will see at what I am getting.

Mr. Martel: No, never. You will not have the final say.

Mr. Morin: I did not say "the final say." If you understood me to say that, I did not say that. I said that in the final analysis, he is responsible for everyone. However, he should also be able to work with a team he will be happy with. It works vice versa; that is what I am saying.

Mr. Chairman: We have enough direction on that one. We will come back to the argument about precisely how the Speaker fits into it. However, we are at a stage where we can proceed from that.

Mr. Martel: You have to remember one thing. There has been one Clerk in 35 years. The hiring of these guys will not happen very often. There is a first clerk assistant position, and we have not had one for the past five years. These things will not happen very often. That is why I say we should add the Speaker as a member of the committee; it will not happen very often in our lifetimes.

Mr. Mancini: I would like to expand number one to include all committee clerks, the director of TV Hansard and the director of Hansard.

Mr. Chairman: I will put this to you then. When John goes through this, we will try to draft a report. This is a first attempt to nail it. These are the head honchos.

The committee will have to decide how far down in the process it wants to go. Remo is advocating some expansion of this which is maybe not untoward. We will list anybody else who could conceivably fit in this category and then ask members to draw the line on how far down you think it should go.

Mr. Martel: I am going to close that right now. We have an administrator, the Speaker and the Clerk. We have all the apparatus for hiring people on a very professional basis. I do not think some committee of the Legislature should start getting involved in the hiring practices of every guy in this building, outside of some very key officers who deal with us on an intimate basis and who must be perceived to be fair.

Mr. Chairman: Let me stop you there, Elie.

Mr. Martel: You are asking for trouble.

Mr. Chairman: I do not think we mean to do that, but I did say at the beginning and I will say again now that when we

draft the report, we will try to provide you with the information so you can make the decision whether these are the only positions to which this process would apply. John can very easily identify other people who might be included in a similar category. You will make the decision at some time as to exactly where the line will be drawn, because we do have to draw lines.

10:40 a.m.

On the second group of people, I sense you do not want this process coming out of a legislative committee. You want the Office of the Premier to continue taking the initiative and putting the nomination. Consultation is fine; you can talk among yourselves. However, the actual nomination would come from the Office of the Premier. The next step in the process would be a review by a committee.

Do we want to deal with the concept of a committee being able to veto, which for all intents and purposes it can, whether or not you give it that power? If you say it goes to a committee for review and the committee makes it very clear that appointment is not acceptable, you have what we saw in a number of American jurisdictions, a hung jury for a while. The moment you say "a review," you are on the road to some kind of veto power in whatever form you give it.

Can you deal with that? Is review enough? The recommendation would say the Premier's office nominates a candidate for Ombudsman; that is referred to the standing committee on the Ombudsman for review. Do you want to say it has the ability to veto it?

Mr. Treleaven: I would like to hear from the government members on this committee. It is fine for the opposition members, provided you consider the New Democratic Party an opposition party--

Mr. Chairman: We do not.

Mr. Treleaven: On that basis, it is fine for the opposition parties to yatter about what they want in a true and grateful world, but I do not want to see the government members of this committee sitting there and letting us beat our gums to death for hours and then coming along at the end and saying: "The Premier will never go for it and the government House leader will never go for it. The government House leader will never call up the report, and it is going to die on Orders and Notices." I have a lot of things to do, rather than take that approach.

Mr. Chairman: Okay, I get the message. Let me hear what you have to say on this issue. The question before you is, how will the process work? The suggestion has been that it would continue to be in the traditional manner; that is, the Premier's office would put forward a nomination and that would stand referred to a committee of the House. The only real question is, do we formalize the veto power or do we simply say in the recommendation that the committee has the power to review? By saying that, you in essence give them the veto power.

Mr. Martel: There somehow has to be a consensus on those three positions if you want them to work. There was a consensus among the three leaders to hire Dan Hill. I do not know whether it went back to the Progressive Conservative caucus for discussion, but it got some discussion in ours.

I do not think one member of the Legislature should be able to veto an appointment, but I think leaders, the Premier included, would be wise to have the consensus of the parties in the House on appointments.

Look at the slate: Chief election officer--we finally have one this time around who is a little more neutral, I might say, than has been my experience. Those are pretty key positions.

Let me show you one that is not. The electoral boundaries commission, in 1975, changed electoral boundaries. We formalized it much more this time so there would be an opportunity to object. Mr. Turner was there when we were doing it.

Mr. Turner: It did not do any good, though.

Mr. Martel: In my case it did, but in 1975 I did not even have a say; I did not have an opportunity.

Mr. Turner: Do not get me going.

Mr. Martel: They redistributed my riding after creating Sudbury East in 1967. In 1975, they redistributed. This time around, they are taking back what they took away in 1975, which is crazy.

Mr. Turner: I wish I could say the same thing.

Mr. Martel: Those things are so sensitive.

Mr. Turner: Exactly.

Mr. Martel: As a Legislature, we have to have agreement and consensus on those. I am not sure how we do it. I might suggest we go the veto route, but I think the Premier would want to have a consensus on those before he nominates.

Mr. Chairman: It would seem to me to be untenable to appoint someone as a chief election officer who could not even get through a review process. If you started with even one of the political parties saying that person is incompetent, unfair and not a good choice, he could not do the job.

Mr. Treleaven: If they said he is not impartial.

Mr. Chairman: That is right.

Mr. Treleaven: Yes, and if we are giving him a hassle every day or every week in the Legislature about not being impartial, I do not think his credibility could withstand that.

Mr. Chairman: I would say for all these positions, whether or not you say you have a veto power, you do for all

practical purposes. If someone began his career as an Ombudsman,, and one of the three political parties said, "That person cannot do that job," there would be very little chance of that person ever being able to do that job.

Mr. Morin: Is that not what happened in the past?

Mr. Chairman: Yes.

Mr. Morin: Normally, it was a unanimous choice. There was consultation on the position.

Mr. Martel: Yes, but the rest were not.

Mr. Morin: The rest were not, but the Ombudsman was.

Mr. Martel: Yes.

Mr. Morin: It was a unanimous choice. If the opposition leaders were not in favour of it, after consultation in the caucuses, I believe--am I right?

Mr. Martel: Yes. We discussed it in our caucus.

Mr. Morin: Then you passed it on to your leader.

Mr. Sterling: The chairman is right; if you create a public process where the person who is nominated is subjected to that public process, by the creation of the process and the requirements to come before the committee in terms of disclosure or whatever else, you effectively bring it down to a pretty narrow group. The problem then comes down to how strong is that process; that is one thing we have to consider.

There was one interesting thing we learned when we were talking to the other legislative bodies in the United States. In most of the legislation, the mechanism becomes extremely important in how we draft the confirmation process that is to take place, if that is what we are going towards. There has to be an element of ability of the committee to delay, because delay can be the sanction. There also has to be the ultimate sanction of the Legislative Assembly voting against a particular individual being appointed, although it would never come to that.

Built into the mechanism in a lot of the US processes is a part where the governor, in that case, can play a game by having somebody in an acting position. There is then a position the committee is in to delay the appointment of the new person to whatever role is under consideration.

In effect, you have a sanction, but it is a compassionate sanction in that you never stand up and say, "You are out on the street, buddy." It is more a question of showing hesitation. Then the political forces seem to work together to exclude that person from that position, or he decides he did not want the job after all.

I like the way it comes out there, because it does not seem as if anybody is challenged too heavily, dead on, unless it is a

real crummy appointment and then all hell breaks loose. That is very seldom done.

Mr. Chairman: Are we at the point where we are saying on this recommendation that, for these positions, the government moves a motion, which then stands referred to a committee? That committee then confirms that motion and brings it back through the legislative process. Is that the way? In essence, you would probably not state a veto power, but it is inherent in the fact that the motion must go through a committee and then be brought back to the House.

Mr. Martel: You would see some consultation ahead of time to clear the appointment?

Mr. Chairman: Yes. Is that the way you want to proceed with this? Is that a reasonable way to proceed to draft it? We are not making final decisions here today, but we are trying to get some guidelines.

Mr. Martel: It leaves the Premier to negotiate behind the scenes to get the thing on track and then get a formal approval. If there is no consensus, he is not embarrassed by it.

Mr. Turner: Which is what he is going to do anyway.

Mr. Martel: Yes. The appointment of Hill was good in that it went through that sort of process. As I say, I do not know what went on to the other caucuses--apparently it did not--but if the process is formalized in the way we report, then all caucuses will have to have some discussion on these very key positions. Those six jobs are not without great significance in terms of what we do as legislators.

Mr. Chairman: Is it agreeable that we will draft it that way and we will make our final decision on it when we finalize the report? All right.

10:50 a.m.

The next thing is that we have to do a little interpreting here about selection of nominees, review of credentials and review of the nominees by the Legislature. In a sense, we have done that a bit. Are we going to advocate that a broad process be established for drawing people into all these agencies? In other words, it is what we talked about during the course of the hearings--making that book available in some form in everybody's constituency office, town hall or whatever. Are we in general agreement with that concept?

Mr. Turner: Sure.

Mr. Chairman: All right. Are we in general agreement that we would make a recommendation? From my point of view, the practical thing is to say that once a year, as a municipal council does, the government will advise people that these appointments are coming up and that if they want to see which specific ones they are, it will tell them where they can go in their

municipality to find out. Do you think we should take that approach rather than what was suggested yesterday of giving a particular group a month's notice?

Mr. Turner: I agree with you in principle. However, in putting them in constituency offices, are we not in conflict with the use of the constituency office?

Mr. Chairman: I do not mean to limit it to that. What I meant was to put it in a constituency office, in the town hall or the library--

Mr. Turner: That is a good place for it. That is something we should take a look at in the general mandate under which constituency offices are set up.

Mr. Chairman: We would simply have John draft something that would identify four or five places in the community where it would make some sense to have it.

Mr. Turner: Exactly.

Mr. Bossy: A constituency office is a good place--

Mr. Turner: Yes, it is.

Mr. Bossy: --because it is about the only place where that book can be kept up to date.

Mr. Chairman: Yes; updating is the problem.

Mr. Bossy: If you put it in a library or any other place, it will be forgotten and the updating will not take place.

Mr. Chairman: We are not talking about a broad distribution; we are talking about four or five places in every community where people could get it.

Mr. Martel: I would be reluctant to put it in a constituency office. I would like a copy, but the important thing is that there are a lot of people, because we are partisan, who do not come to my office. I am sure you all have the same thing happen. We should have a list of five or six key areas.

Mr. Turner: Put it in the city hall, in the clerk's office.

Mr. Bossy: The clerk's office is not a partisan office; it should not be.

Mr. Chairman: We have a practical problem that Elie is trying to point out.

Mr. Martel: I am trying to be practical.

Mr. Chairman: For example, in many parts of the north, a member might have one or two offices, which is not to say that he is in every community.

Mr. Martel: I have 22 communities in my riding. It is a little different from yours, Maurice.

Mr. Bossy: In my riding, it is reasonably practical to have them in one office.

Mr. Morin: Nothing prevents them from calling you.

Mr. Martel: No, but we should consider putting one in the township office in each municipality.

Mr. Chairman: Okay. We can take a whack at that.

Interjections.

Mr. Martel: Yes, but you do not have 22 municipalities.

Mr. Morin: Okay, but I have a lot of--

Mr. Martel: There is a big difference. There is a big difference when you have 22 communities.

Mr. Chairman: Are we in agreement then that we will draft a recommendation which says the book gets not a wide circulation but is available in every community, and we will suggest the places where it might go, such as constituency offices, town halls, libraries and maybe one or two other places?

Mr. Martel: I will name six. Can I name six which will cover everybody?

Mr. Chairman: John will do that.

Mr. Martel: In addition to the three you named, we might put one in the chamber of commerce office, one in the labour council office and--

Interjection.

Mr. Martel: They all have an interest in it. Doing it that way, it is everywhere.

Mr. Sterling: Do you know what are you talking about? The material has to be updated all the time.

Mr. Martel: That is right.

Mr. Sterling: How much paper are we going to be producing?

Mr. Chairman: I would like to strike a balance between the practical updating of the book and the fact that we want to make sure people in every community have access to it.

Let me go to the next section, which goes through the selection process in a little more detail.

Mr. Treleaven: Excuse me. John just asked me a valid question. Do I have one of these books on agencies, boards and commissions?

Mr. Chairman: You can get one.

Mr. Treleaven: It is so important that I do not know whether I have one.

Mr. Chairman: If you stand up there is one there, there is one there and we sent one to your office.

Mr. Treleaven: Yes, one of those things; but did other members have them before?

Mr. Chairman: No.

Interjections.

Mr. Treleaven: All right.

Mr. Chairman: One was sent to your office.

Let us go to the next section, on the selection of nominees. The suggestion here is that it would be possible simply to go through as John has outlined here. The other document that is published anyway and contains similar information is the Ontario Gazette. It would make some sense to continue the practice of publishing in the Gazette, with the addition of appointments to agencies included in that. That is a fairly widely circulated document and solves part of your problem of updating on a regular basis.

He has made a stab at where these places might be, such as libraries, offices of the ministries and agencies, and we have had some other suggestions too.

In terms of an intake process, would you be advocating that some kind of an appointments secretariat be established in the Office of the Premier to receive nominations? It could go there, to the Civil Service Commission, to Management Board of Cabinet or to a special office for appointments.

Mr. Turner: Ultimately it has to go to the Premier's office, the appointments secretariat, for records, if nothing else.

Mr. Treleaven: Let us not try to reinvent the wheel totally. There is a sort of system there.

Mr. Chairman: The consensus I am reading is that in the Premier's office there is a group called the appointments secretariat and that we would encourage people who have a nomination they want to make to send it to that central source. If we advocate the creation of a data bank, for example, it would be done there.

Mr. Turner: Exactly.

Mr. Bossy: That is not exactly the way it is handled.

Mr. Turner: Not now, no.

Mr. Morin: It is sent to my riding. I have said publicly in whatever meeting I go to, "If you are interested in any appointment or nomination, regardless of the party you represent, write to me." I have received a number of applications and I direct them to the Premier's office.

Mr. Turner: That is what we are saying.

Mr. Chairman: There would be in the Premier's office a group identified as where members, municipal organizations, cultural groups, ethnic groups, native people and everybody would send it to a central source. At that source, a data bank of sorts would be kept so that all these names would be on file, and when you want to use computers to find possible nominations, it is done from one source.

Mr. Martel: I agree with that totally.

Mr. Bossy: It goes to the relevant ministry.

Mr. Chairman: We are saying no to that idea. We are saying a central source for collating nominations.

Mr. Martel: Yes. You should create a special office for the gathering of nominees' names.

Mr. Turner: The problem is that we are going to set up a duplicate facility; the machinery is already there.

Mr. Martel: I have been here 19 years, and I did not know it was there.

Mr. Turner: I did not either, but there is in the Premier's office an appointments secretariat, and the chairman has said it is there; why duplicate it?

Mr. Chairman: What we need to do is to establish a central source of information.

Second, one different thing has to be done: the process of putting the names on a central list needs to be one to which we have access. In other words, if I put in a nomination for an agency in a ministry, it is pretty important to me that two lists are not kept and that there is access to that list. It is important to me that we can keep track of the record of what I do as a member or what my municipality might do.

Mr. Turner: Why would that not be circulated to each member?

Mr. Chairman: It could be.

Mr. Turner: Or even to members of the committee.

11 a.m.

Mr. Chairman: It could be, but I am not interested in broad circulation. I am interested in access. For example, if my

municipality put forward a nomination for a particular agency, it seems logical to me that six months from now, it would want to know whether anything is happening with that nomination. I should be able to check whether that nomination has been received, whether it is under active consideration or whether it is not being considered very actively right now but is being held on file. In other words, there should be access to that.

Mr. Turner: We could have a printout of that.

Mr. Chairman: Yes.

Mr. Turner: Why not do that on a regular basis to the members, the same way as the Office of the Assembly gives us an expense printout? It can be updated.

Mr. Martel: They might not want the bloody thing; so why spend the money?

Mr. Turner: The example the chairman has given is very valid. People do contact members to keep an eye on whatever.

Mr. Martel: That is why I am suggesting what you need.

Mr. Turner: I think that is important.

Mr. Martel: The Premier's office has a feed into that sort of thing, but if we are going for a new process and you want to make it bona fide--and if I heard the Premier correctly, that is what he wants--you should have an appointments secretariat. You might take the same people who are doing it now, but they would become a distinct group that gathers everything and puts it on file.

If I want to know whether the name I submitted is on the list, I can do what the chairman says we do. I go down the hall and ask: "Can I check the list to see if my application got in? Did it get lost because nobody has heard back?" That way it does not take anything away from what the Premier will do, but the structure has an appearance of being--

Mr. Turner: We are talking about the same thing.

Mr. Martel: Half the battle is that it appears to be--

Mr. Turner: As long as we do not leave it there.

Mr. Martel: People will say, "Even in the Premier's office it remains totally partisan." I say that for my Liberal friends.

Mr. Treleaven: I am swinging around. This is a crazy morning; Elie has convinced me of something. I said that we already have this set up in the Premier's office and that we should not reinvent the wheel, but its appearance is still cloak and dagger. If we are trying to have a new day and turn a new page, its appearance is that it supposed to be yanked out of the Premier's office and stuck in a separate office by itself. A new

day is here and appointments are now wide open. There is the appointments office, the same as there is the payroll office and the something else office.

Mr. Chairman: The reason I have no problem with its being in the Premier's office with a couple of cabinets is that we are still saying the Premier's office will take the initiative in making the nominations. I have no problem with that, as long as I have access. If my computer can talk to their computer, and I can find out where the nomination from the city of Oshawa or the francophone association is, that is what I need.

I do not need a list, a printout, a book or a separate office, as long as it is clear in the recommendation--and I am envisioning that this will be computerized--that members of the Legislature and others will have a right to check on where that nomination is in the process, whether it is being actively considered or what. I have no problem with leaving it in the Premier's office.

Mr. Martel: I disagree with you. It is to the Premier's advantage to appear to be distanced from it to some degree. He would have the same computer printout, the same computer feed-in and feed-out that you are asking for. There is the appearance that it is there, that it is not beholden, and yet you see it in the Premier's office. For all his good intentions and although he will have as much control over it as anyone else, it will not have the appearance of being a neutral thing. The perception, however, is an open one, which I think the Premier will want.

Mr. Chairman: Let me put the question to you. I do not have a consensus on this. Some of you argue that it should be maintained in the Premier's office with access, and others argue that there should be a separate appointments office.

Mr. Turner: With access.

Mr. Chairman: With access; access would be either way. The only difference would be whether the recommendation would be around an appointments secretariat established in the Premier's office to which all members and others would have access, or whether you would go for a separate appointments section.

Mr. Treleaven: The only one I hear speaking out for leaving it in the Premier's office with access is the chairman.

Mr. Chairman: Yes.

Mr. Treleaven: You said there are two sides.

Mr. Bossy: I believe we all have different perceptions of what is transpiring on this. As I perceive it, to take one example, if a police commission appointment goes through, it is the Solicitor General (Mr. Keyes) who brings it to cabinet for approval; he does not approve it. He gets all the names. All the names for the police commission go to him, not to the Premier's office, and it is sorted out from there.

Mr. Chairman: However, the appointment comes by an order in council, which means it is initiated in the cabinet.

Mr. Bossy: It goes to cabinet for approval.

Mr. Turner: That is right.

Mr. Bossy: The cabinet would be sitting day in and day out.

Interjections.

Mr. Chairman: It would be helpful if I had a little order here this morning.

Mr. Bossy: Now we are saying to send everything to the Premier. What I am saying is that all applications for positions should be identified initially under which ministry they fall.

Mr. Chairman: That is no problem.

Mr. Bossy: That is where they should go.

Mr. Chairman: No, that is a problem. The problem is not where the flow of nominations is coming from.

Mr. Bossy: That is where it is going to be sent anyway.

Mr. Chairman: The problem is to track it; it needs to be in a central place. That central place can be anywhere you want it.

Mr. Mancini: They are already tracked.

Mr. Martel: They are tracked there.

Mr. Mancini: The books are published; they are already tracked.

Mr. Chairman: No. You are missing the point here. The books of appointments are already made.

Interjection.

Mr. Chairman: We are having a discussion about how members get access in the nominating process, how we follow the process, where the lists are and who has access to the lists before the order in council is put out.

I think I hear a consensus that it should be a central place. The only point to be resolved is, do you want to put a recommendation together which says it should be somewhere other than in the Premier's office or in it?

Mr. Mancini: They should stay with the ministries.

Mr. Turner: No. With respect, there has to be a central collection point, and then it farms out from that point.

Mr. Chairman: Yes. We have agreement on that. The point is, where is the central place?

Mr. Turner: I would put forward the notion that it should be a separate office.

Mr. Bossy: That creates another bureaucracy.

Mr. Turner: No, not a duplication. Do not misunderstand me. Mr. Martel and I have argued this out. Take the people out of the Premier's office who are doing it now and put them in a separate office so there is no perception of political interference, if you will.

Mr. Chairman: There is a way to resolve this that might assist you--

Interjection.

Mr. Turner: I cannot hear you.

Mr. Newman: I said the fact that you send in a letter of recommendation is political interference.

Mr. Turner: Certainly it is.

Mr. Martel: What the Premier wants--I listen to him carefully when he talks about this--is that everything is going to be fed into a central agency which the Premier will have his finger on. If you want to break down the perception that it is straight patronage, what the chairman is saying is to feed it into an area.

We are all going to have computers within a year and a half; they are going to tie into the library and eventually into Ottawa, for Christ's sake. If the chairman wants to know whether the name he put forward or somebody his municipality wants on the police commission got on the computer list, all his secretary has to do is punch it in to see whether it is on the list. That does not prevent its being fed for the scrutiny of the Solicitor General, once the list of all nominations comes into the central agency. All those names go back to the Solicitor General and to the Premier's office, and from there the cabinet decides whom they want to appoint.

All I am suggesting is that we set it up so there is a perception, which is important. That is as important for you as it is for me. If you take all the appointments by the various municipalities that say, "We want these guys appointed by the province," or anybody else as the provincial representative on the police commission, it will all come into there. From that point, it will all be sent to the Solicitor General, because it is all going to be put into the computer. It is all rapped out and sent to the Solicitor General. He and the cabinet then decide whom they are going to appoint, not us.

Mr. Bossy: It is a mail sort of process. That is all that is.

Mr. Martel: I am taking about efficiency, though, and perception.

11:10 a.m.

Mr. Bossy: Then it becomes more political because it is a record in the Premier's office. You are saying that everything is sent to the Premier's office. The Premier is still the boss, and it is going to become very partisan because this is in his office.

Mr. Martel: That is where it is now. I am saying it should not be there.

Mr. Bossy: It is not in there.

Mr. Martel: Sure it is.

Mr. Bossy: It is in the ministries.

Mr. Turner: No.

Mr. Martel: I am saying you create the office--

Mr. Bossy: Has anyone sent an application to the Premier's office? Not one. I identify who the minister is and--

Interjections.

Mr. Chairman: Order.

Mr. Bossy: That is not a problem? It sure is.

Mr. Chairman: Could we make--

Mr. Treleaven: This is a new day and it should be an open government.

Mr. Chairman: This new axis on my extreme left is getting particularly obnoxious.

Could we make a recommendation that would say the Legislature itself would be responsible for the keeping of this list? Everybody would have access to it: the Clerk, the members, Premier's office, the ministries, whatever. What we are talking about is a computer operator. It could be in the Clerk's office or in the legislative library. There are a number of places where that function could be done.

If it is important to you that it not be seen as part of the Premier's office, that is irrelevant. We are talking about a central source where nominations could be sent and files kept on them. That does not have to be in anybody's office in particular. If you think it is preferable, the recommendation simply could be that the Clerk's office maintains this list.

Interjection: That sounds like it needs a lot more discussion.

Mr. Chairman: What we can do with this kind of thing is draft a recommendation in the report which says a central, nonpartisan, Clerk's office kind of thing be charged with the responsibility of providing the computer tapes to the members on this. Is that what I hear you saying?

Mr. Mancini: Not now.

Mr. Chairman: We have to put it one way or the other.

Mr. Martel: Leave out the words "Clerk's office."

Mr. Turner: Yes, I have some reservations about that as well.

Mr. Chairman: All right. We would talk about an appointments officer who would keep these rolls.

Mr. Turner: Yes, I think so.

Mr. Chairman: The next thing we have to go through is that out of all the things we have seen about reviewing credentials, we have to make recommendations that would say no background checks or whatever, which is now the case in some instances, or we might go to something we saw in American jurisdictions, for example, where there are extensive checks on people.

What is more likely, we might want to recommend that some kind of simplified form be used where people would declare their conflicts of interest or things like that. From that might come more extensive checks in some instances, but by and large we would not require what the American jurisdictions require.

Mr. Turner: It would ask for the basic information that any employment application form would have on it.

Mr. Chairman: Yes. Background.

Mr. Martel: You might ask Kurt Waldheim.

Mr. Turner: Yes, that is an interesting one. How did he get his appointment?

Mr. Martel: I do not know.

Mr. Chairman: I take it from the mumbling and grumbling that you are not advocating absolutely no background checks.

Mr. Turner: Right.

Mr. Chairman: There is a consensus that some modified form of checking would be done.

Mr. Mancini: It was brought to our attention some time ago by some individuals who came to make presentations that they felt the nominees to the police commission should be checked to see whether there were any criminal records or anything of that

nature. Something like that is more than reasonable. I am not sure how extensively we want to go into these background checks.

Just for the record, I am not enamoured with the American system whatsoever. From the events I have seen on American television as to how they review their appointments, the members of the committee are terribly partisan and use that for their own purposes. I have seen that on a number of occasions.

I know some Michigan legislators who drool at the thought of going to one of these committees to attack the Governor's appointment solely because it was the Governor's appointment. I am not enamoured with the American system.

Mr. Chairman: What I hear you saying is that somewhere in between the two extremes of doing absolutely nothing and going overboard as the Americans appear to have done is the kind of recommendation we would like to make.

Mr. Turner: Why not put the onus on the applicant and have a question on the application form, if that does not violate anybody's rights, as is done on a driver's licence or whatever else?

Mr. Chairman: Like a declaration or something?

Mr. Turner: Yes.

Mr. Martel: Maybe we should consider drafting a form that people can fill out when they know ahead of time that they are going to apply for an appointment. The information we want could be on the form. Rather than us going through the whole thing now, we might decide what information we think is relevant. For some, it will be academic background--at least I hope so; if we are looking at a university appointment, we want a person with some academic background.

Rather than trying to put it into a recommendation, perhaps we should simply say the relevant material will be on the application form, since people will be making applications for this in a much more formalized way than has been the case in the past. We might put all that on a form.

Mr. Chairman: We would then start with a simplified declaration?

Mr. Morin: Yes, but--

Mr. Treleaven: A standard minimum--

Mr. Morin: Excuse me. It is my turn, Dick.

Mr. Martel: Good stuff. He is learning now.

Mr. Chairman: You are just as obnoxious on that side of the room as you were over here.

Mr. Morin: It should be phrased in such a way that the application is geared to the job offered. That is what Elie is

saying. In other words, if you have an application for a police commission, surely you should scrutinize the individual to see whether he is a crook or whether he has done anything that would bring the reputation of the police commission into question. If it is a question of an appointment to a social agency or an agency that deals with children, you would want to be sure that the fellow is not--what do you call it?--a pedophile.

Mr. Bossy: A child molester.

Mr. Morin: A child molester. The application should be geared to the job that is offered.

Mr. McCaffrey: The implication is that crooks and child molesters would be all right in some of the other 596 slots. What we are trying to do is get a straight form where all the appropriate material and statements are provided. The personal checks are the next part of our agenda; that is where we will have the opportunity, depending on the appointee and the job, to go into those questions in some detail. I do not think we will resolve this by tailoring it; we will have 50 different forms.

Mr. Chairman: The other thing that occurred to me is that there needs to be a notification process that if someone puts forward his name as a nominee for any of the agencies, there is some potential to do further checks; the person would have to agree to that. People should be made aware that if their name is put forward to be on a police commission, for example, it is quite likely that some security check will be done.

Mr. Turner: That could be on the form itself.

Mr. Chairman: Yes.

Mr. Treleaven: My point is--I disagree with Gilles--that there should be a minimal form to be signed for all these. You would have one of these checkmarks, such as there is on insurance forms, where you are asked if they can go to your doctor for confidential information. You would just check the thing.

That is the minimum. For police commissions, there would be more, but everybody would fill in this minimal form. Maybe 90 per cent of the people would sign only the minimal one, and you would then be done with it. It would be a very simple form asking your age, marital status and just a few--

Mr. Chairman: We can take a whack at that.

Mr. Treleaven: You would get fancier as the uniqueness of the position carried on from there. You would have additional forms.

Mr. Chairman: Are we generally in agreement that this is the way it will be drafted? Can we put it to you?

Mr. Martel: It cannot be so slight that all you are ending up with is a name, address and street number. There is a medium position somewhere in between what Gilles and I said and what you said.

11:20 a.m.

Mr. Chairman: The next item is something to consider. We have heard from a number of agencies and people that there is not much available in the way of criteria. It would be fairly logical to ask each of the agencies to give us some information, whether it is a brief synopsis of what one is expected to do in that agency or something such as that, or to establish the criteria and write them up for us so they are available. Then people who were interested in being nominated to a particular agency could go to a source to get a little background on what they would be expected to do in this agency.

I do not know how formalized we want to get with this, but some guidance is required. I may have somebody who is a very good person, but before I would want to nominate him to an agency, I would want to know what is expected of him in that agency.

Mr. Turner: So would he.

Mr. Chairman: Yes, so would the person.

Mr. McCaffrey: I like the idea, but I will share something I think is quite specific and simple that we can get a handle on. It may make it difficult to do what we want to do.

For example, if we had the Royal Ontario Museum board of trustees draw up such a plan, it does not take too much imagination to know that some of the characteristics would speak to academic interests and so on, for obvious reasons. I make this point only because it could be made with every one of the appointments we are going to be looking at.

In the history of that institution, there was a period, and it is still on, when the need for a fund-raiser became more important than anything else. Syd Hermant, who was chairman of the Royal Ontario Museum, had all the qualifications for which any kind of objective description could ask. When his term was over, he was replaced by Eddie Goodman. I am not sure of Mr. Goodman's academic, museum, historical and archaeological background, but I sure as hell know about his ability to help raise some dough.

That is a problem area, because each of these institutions goes through different cycles at different times. The priorities and needs of TVOntario are not what they were. I can speak only on that parochial level, but moving away from that, I think those problem areas, be it the Ontario Human Rights Commission or Ontario Hydro, have different needs at different times. It is going to be difficult for us to get the institution to provide on paper what is required.

Mr. Sterling: This whole process of looking at appointments also has the beneficial spinoff effect of putting the government in a position of having to define better the role of its appointees. I admit we have not done that in the past,

Mr. McCaffrey: The onus should be on the government.

Mr. Sterling: In effect, the government still has to say what the board or its appointees should be doing, whether they are expected to be advisers to the government or to act in an objective role or not. Therefore, this process will have two very good effects. I almost think the second one will be a better effect than the first one.

I was aghast to find there is no memorandum of agreement between this government and the Stadium Corp. of Ontario Ltd. Those guys are wandering around without a mandate. They have an unsigned agreement, and they are going to put a contract for \$234 million on the line.

Mr. Martel: That was good old Bill Davis.

Interjection: I trust Bill Davis.

Mr. Sterling: I trust a lot of different people, but I think it is also important that, if you have a government organization, there is a clear understanding of the relationship between the appointees and the government. That is what accountability is all about, and that is what we are entitled to.

Mr. Turner: It makes it easier for the appointee too.

Interjection: You guys have seen the light at last.

Mr. Treleaven: It is a new day.

Mr. Turner: This is the first time we have had the opportunity.

Interjection.

Mr. Turner: I think it is just as great for us as it is for you.

Mr. Chairman: What we have to do is to attempt to get the agency to lay out for nominees what it really does. It could be done in the annual report, it could be done in this book, it could be done in a number of ways. Some do; some do not. We would be anticipating that in various ways the government would also give its expectations, so that there is at least a frame of reference here for the agencies about what they are expected to do and the kinds of people who could legitimately be expected to serve on them.

As Mr. McCaffrey says, there may be a particular need at a given time in an agency, which says, "In addition to all these other things, what we need right now is somebody to raise some money, administer a project or do something such as that."

The next section is the review of these appointments by the Legislature. Mr. Eichmanis has laid out a proposal, a mechanism whereby the review could take place, saying essentially that when someone is appointed, the name will be tabled in the House. The appropriate standing committee will have the power to call the appointee for questioning. That power will go for 30 days, after

which time he will get automatic approval. You have 10 days to complete a review.

Mr. Eichmanis is also making a comment here about officers of the House and things of that nature.

That is one generalized way that incorporates a lot of what we saw in other places. The appointment is made; there is no question about that. The review process consists of saying: "Here it is for 30 days. If you want to do something about it, that is the time frame. After 30 days, the appointment stands. If you pick it up, you cannot stall on it for three years; you have 10 sitting days to deal with it and then you make your recommendations."

Mr. Treleaven: I am in agreement with this system being set out, but I want to make sure that when it is tabled there is a signal given, such as Mr. Nixon saying in a motion, "I move that a report or list is being tabled," or "Today I give notice of a list of government appointments." At least there should be some signal that something is happening, rather than things just sliding in and getting dumped on the Clerk's table, where they are gone in the wind.

I would like to make sure there is some signal that this is open; that the whole process is open. There is a little signal, "We are tabling this today." That is the way he does it, and we order him to table answers to questions 1 through 6. At least there is a signal for the House to say, "There is something we should take a look at."

Mr. Turner: I am generally in agreement with procedures pointed out here, except I go back to what I said earlier on the last recommendation; in my view, the Speaker must be intimately involved in the process of approving officers of the House.

Mr. Chairman: This would probably apply more to other things rather than that.

Mr. Turner: It is specifically mentioned, and that is why I brought it to your attention.

Mr. Chairman: In fairness, we should drop that last part.

Mr. Eichmanis: I am sorry; it is my fault. The idea was that the first four points dealt with agencies, boards and commissions and then the policy field committees that would be doing the review of which agency fell under that. At the time I wrote this, I was thinking the standing committee on procedural affairs and agencies, boards and commissions would be doing the officers of the House.

Mr. Chairman: It is basically an example.

Mr. Turner: That would be a separate procedure altogether?

Mr. Eichmanis: Yes.

Mr. Chairman: The other thing I wanted to point out was that you started by saying, in the broadest brush, that all appointments would be tabled in the House by some means, by motion or otherwise. We entertained some discussion yesterday, as we have throughout the hearings, about whether we want to classify and make different classes. Do we want to get into saying, "For this group of people, it is done by motion in the House, it is tabled and it stands as this process would go, but none of that happens for this other group of people; it is just public information that is gazetted, tabled or whatever"?

Mr. Turner: Would that not be a decision of the committee?

Mr. Chairman: We have to make some recommendations around this. Do we want every single appointment--that is 2,440 of them--done by this process? Do we want to say this process applies to 1,500? How do we want to do that? Do we want to classify?

Mr. Treleaven: I would like to see all of them done, otherwise you might get into a game. If you start to classify them so this group goes in and this group does not, you would then have a jiggling and a game going on trying to reclassify various people so it did not show up. I would think, for the sake of openness; they all should be listed with no emphasis on anybody in particular.

11:30 a.m.

Mr. Chairman: There are two ways to go about this. One way would be for this committee to make an attempt to classify and say, "This group goes through this process; the remainder do not," or you could let nature do it for you and say the process is the same for everyone in theory.

In practice, the committees are not going to review 2,400 appointments, or even 800, in a year. For practical purposes, the committees may on occasion review an appointment. That is what is going to happen. We could let it get sorted out that way. Those are the two polarities.

Mr. Turner: I like the second option. In the recommendations Mr. Eichmanis put forward to us, that option is built in. It say the appropriate standing committee "would have the power." Why not say it "may have the power?"

Mr. Chairman: However it got drafted, that is the general concept.

Mr. Bossy: I foresee some problems, although maybe they are not there. You say, "All appointees names will be tabled in the House immediately upon an appointment being made." The appointment is made, it is tabled in the House and it is known back home, wherever they happen to be appointed.

Under ideal conditions, these things sound not bad, but under highly political conditions--when this happens close to an election or whatever--we know from our visits to the United States

that there are some extremely heavy lobby groups there on appointments. Certain people who get appointed have had a tremendous lobby behind them.

Mr. Newman: We have had that here.

Mr. Bossy: No, we have not.

Mr. Newman: You never knew about it.

Mr. Bossy: Let me say this. As soon as that is tabled, how do you draw one of those appointments so the appropriate standing committee would have power to call appointees for questioning? Why would you do that? Would it be on the basis of a lobby that wants to have this guy reviewed or something exposed? They want to bring witnesses or whatever. They may want to ask to be heard because they want that appointee questioned or to bring disgrace to the appointment or to the sitting member at election time.

These are the things we must beware of so we do not get trapped into the situation. Ideally, we can agree here and be nice about it, but the realities of dirty politics exist at all times, and at election time it is all fair.

Mr. Chairman: What we have to be aware of is what people can do now and what we might do in the way of recommendations that would put some order into the system. The truth is that right now, if I wanted to make a political issue out of some appointment, I could do that, with no process in place at all. It has been done here many times.

A political party may decide an appointment is clearly wrong and go to a committee where estimates are under way or go to a committee and say, "Here is something we want to do." We can refer an annual report out; that gets it on the committee's agenda. We can get enough votes in the committee to call the person who has received the appointment as a witness.

It can happen now. The only difference we would be making is offering a recognized process whereby there is some order in how it is done. In other words, it would force me to make a political decision that within 30 days of something being tabled, I would get it on a committee's agenda. I could deal with it for only 10 days; I could not drag it on for ever and ever. In other words, we are shaping how this would happen by means of recommendation.

As it would now proceed and as it has done so here in the past, it is catch-as-catch-can. It really is dirty politics. A hot political issue erupts, it gets sent to a committee, and the committee deals with it as it sees fit, for as long as it sees fit. We would be putting some order into that. That would be the nature of the recommendation.

Are you reasonably content with the time frames that Mr. Eichmanis has suggested?

Mr. Mancini: I am very concerned about what was said about time. You are asking us if we are agreed to the time frames,

and we have not even agreed on whether all these names are going to be available to be referred to all these committees.

Mr. Chairman: Are you suggesting we could not? If I wanted to challenge an appointment made by the current government, I have means at my disposal to do so. I could take their annual report from last year and get 20 of my colleagues to sign a motion. That gets it out to a committee and on to the committee's agenda. If I convince enough members on the committee to call that person as a witness, he is in front of the committee.

I have no limits on how long this goes on. As long as I can keep the majority of that committee going, I can put that person on the hot seat for as long as I want. That appointment is in question in political terms for as long as I want. I have open season right now.

Mr. Mancini: Do they have a similar process in Ottawa?

Mr. Chairman: Yes, the same thing could happen in Ottawa.

Mr. Mancini: If that is the case, why is the Ottawa government moving in the direction of having three of its crown agencies reviewed on an open and ongoing basis similar to the description of the information we received yesterday?

Mr. Chairman: It is formalizing the process for only three agencies.

Mr. Mancini: Why it is doing that when it could do it anyway?

Mr. Chairman: It is simply trying to encourage a bit of order into it.

Mr. Bossy: I have never heard of it being used.

Mr. Chairman: Here?

Mr. Bossy: No, in Ottawa. You say it is in Ottawa.

Mr. Chairman: In Ottawa, committees regularly call people who are appointed to agencies, deputy ministers, or anybody they want for that matter, before a committee. We do exactly the same thing here.

Mr. Mancini: We call people all the time. I cannot remember the last time we called someone before a committee.

Mr. Chairman: The Stadium Corp. of Ontario Ltd. downstairs to the standing committee on public accounts.

Mr. Mancini: Yes, but that was in regard to some decisions they made.

Mr. Chairman: That is right. You could do exactly the same thing over who gets appointed to the stadium corporation. There would be absolutely nothing to stop you.

Mr. Martel: You are mixing applies and oranges. What we are talking about--

Mr. Mancini: Elie, if you were to put your feet down I could see your face and maybe understand what you are saying.

Interjection: Let him leave his feet up.

Mr. Treleaven: He is just showing off his new shoes.

Mr. Martel: I bought new Dacks, no less.

Mr. Treleaven: Socialists should not be buying Dacks.

Interjection: He wants to be the Treasurer.

Mr. Martel: What we are saying here is that we are talking only about the time of appointments to boards, agencies and commissions. If you change the order a little, it makes a little more sense. I am sure John did not worry about the order. If you did that in an annual report, it would be the update that Maurice talked about--keeping the list updated. If you table the annual report of the appointments, you then have the whole report on what the update would be.

The committee would look at the annual report that is tabled, but it would not would not go through the names individually; it would pick out the ones that it might find were wrong or that it had some concern about. If you did not act on it within 30 days, then your chance for the rest of the year would be gone, and you would have to live with the appointments because many of them are three-year appointments.

By and large, most of the appointments are an open process. Who is going to object to an appointment to a police commission unless you find out the guy is a thug? Someone may make a mistake and get somebody by. There should be some mechanism that says you have a right to review it.

Mr. Mancine: Maurice made a very good point. A lot depends on the political situation at the time. What you would do today may be far different from what you would do six months from now. That in itself distorts the process tremendously.

Mr. Turner: I do not think it distorts the process. Frankly, I see it is a safety feature, a safety valve. The procedure is in there if you want to use it. If you do not want to use it, fine. I cannot see it happening all that often, as Elie says.

Mr. Bossy: If we accept that what we are trying to establish here is a completely new procedure--a new office of appointments, we might as well say--we are going to open up a whole new can of worms. As bad as it is, I am not saying the status quo should be there--it should be modified--but I am afraid that whatever that office is, if it is regarded as independent from the government because you want to have it open to everybody, everyone out there will be bombarding that office. The lobby

groups will be in there bombarding that office for their appointment. Now it is controlled by the government in power--

Mr. Turner: It still will be.

Mr. Bossy: You do not have that.

Mr. Turner: Yes, you do.

Mr. Bossy: Not really.

Mr. Turner: Yes, you do.

Mr. Bossy: This is a new bureaucracy they are going to be talking to--

Mr. Turner: No, no.

Mr. Bossy: It is not the government. If we want to have the ideal thing, to take it away from partisan politics, that office will be under tremendous pressure for certain appointments.

Mr. Martel: It would not make the appointments.

Mr. Bossy: It will be under pressure to recommend.

Mr. Chairman: If I could interrupt for a second, I may be misreading the committee, but I sense that this committee is not operating with a fairy-tale concept that the politics will ever be removed totally from this system. What we are talking about is that there will be an order, a process will be understood, that process will be open and the public will have access to it. That is about as far as we are going. There is no one here whom I have heard who is naïve enough to think that politics will be removed totally from this system.

Mr. Bossy: We have already done it.

Mr. Chairman: I do not see that it can be done.

Mr. Bossy: We are trying to achieve something we have already done by opening up something that was a no-no. There was one set of books like that before.

Mr. Chairman: That is fine. I am not taking that away from anybody at all.

Mr. Bossy: That has opened it completely.

Mr. Mancini: That is right.

Mr. Bossy: Every person will have access to see who is on which board and what their terms are.

Mr. Turner: We want those people to have the opportunity to be on these boards too.

Mr. Martel: May I ask a question? You really do not believe that where you feed this stuff into is going to be the

place where appointments are made, do you?. I do not see them making even one appointment. When you sort it all out, appointments to police commissions would go back to the office of the Solicitor General, and he will make the ultimate decision.

I do not see this group that is going to gather and collate the material and put it on a computer making the recommendation as to who should be selected; not at all. That is not going to be the capacity of that gathering agency.

Mr. Turner: It is a receiving office.

Mr. Martel: You are not going to ask five civil servants to make the appointments to police commissions all over Ontario. The government is going to do that because it is the government of the day, and that will be the Solicitor General of the day.

Mr. Bossy: The political interest must be there. It is going to be there by the member in the riding. I am talking about those appointments within a constituency; that interference is going to remain. If it does not, it is political suicide for the member.

Mr. Martel: I have never been bothered with it in 19 years; it has never worried me. The only people I recommended were Tories, because I knew the government would turn them down.

Mr. Bossy: They have it in the United States; the credentials are so important.

Mr. Martel: Sure. I recommended Tories because they turned them down if they came from me.

Mr. Bossy: We cannot remove that from the political realities; we cannot remove that of all applications that go in the only ones that will come to the surface will be those with the purity of the party or extreme credentials as to ability.

Mr. Martel: The receiving house is not making the appointment, Mr. Bossy.

Mr. Bossy: That is why I do not believe in that one, because it is the distribution centre.

Mr. Turner: It has to go someplace.

Mr. Bossy: It will be like Mississauga sorting our mail and sending us the chaff for further distribution. That is what happens.

Mr. Turner: Not really.

Mr. Chairman: To go over this again to see if we are getting anywhere, I do not sense that there is any naïveté here. I sense that what we are grappling with is whether we can find a process that is known, fair and has some order to it? There is no denying, as I have heard from everybody here, that all these appointments in effect will be done by an order in council, as

they have always been done. The difference will be that we will order how the review takes place, that the review will take place, as it can now, but there will be an order to it. That will be the gist of the recommendations.

Mr. Mancini: If that review can take place now--you are absolutely correct; I referred a couple of annual reports to different committees myself--if that review can take place, we can always use that as the formal way of doing things.

Mr. Chairman: It is conceivable, but I do not believe that is what the House had in mind when it ordered us to conduct a review of how these appointments are done and how to review these appointments.

Mr. Mancini: There are 125 members; I am not so sure we can crystallize as clearly as we would like what the House had in mind. Let us take, for example, all the work we did on the rule changes. When we brought that back to the respective caucuses, we still had 30 different opinions on all the rule changes we made. I am not sure the House had crystallized its view on this. I use that only as an example that I and my colleagues just went through.

Mr. Chairman: The trick for us is to suggest a process that makes sense to us; something practical, reasonable, orderly and public. This does that. Do we want to alter this concept substantially or to take Mr. Mancini's suggestion? I say, offhand, as a response, that when the House took the time to agree to a motion by the government House leader to tell this committee to review all this and to make a report on it, it did not opt for the status quo. It wants a change, and change will happen. It is our job to provide recommendations that make sense to us and that will be workable.

Mr. Mancini: We are not opting for the status quo. I do not know how my colleagues feel, but we seem to get no credit whatsoever for any changes we agree to. When we want to question some other changes, we get it thrown in our faces that the House did not want the status quo. We are making changes all the way along, as we are going along. I, as one member, will acknowledge that.

Mr. Chairman: We went to great lengths to give the current government credit for publishing a book that has never been published before. I am very happy to do that, and I do so regularly.

Mr. Mancini: That is not all we have done.

Mr. Martel: This motion came from the government.

Mr. Mancini: I know that.

Mr. Martel: It wants change.

Mr. Mancini: We are making changes. I refer you to page 2 of the items we are discussing today.

Mr. Martel: This is only a recommendation. It does not have to accept a god-damned thing we recommend.

Mr. Mancini: My basic understanding of this committee is that we have tried to work as a group and to implement things we have agreed upon.

Mr. Martel: The results of two reports--

Mr. Mancini: Elie, I am not that naïve. Do not say we are making only a recommendation and the government does not have to accept it.

Mr. Martel: It does not.

Mr. Mancini: It is a little more complicated than that.

Mr. Bossy: We expect it to accept it.

Mr. Martel: Yes. However, I have never seen a report that was adopted in its entirety, verbatim, the way any committee had written it.

Mr. Mancini: Every group here has to go back to sell what we do.

Mr. Martel: That is right.

Mr. Mancini: Before I go anywhere to sell any recommendations of this committee, I have to be entirely satisfied (1) that it is the proper thing to do and (2) that I agree with it entirely, so I can convince somebody else.

Mr. Martel: You are suggesting that if you wanted to get at an appointment made by the Solicitor General you would send it to the--what do you call the committee that does all the legal stuff under the existing rules? If you wanted the Ministry of Labour, it would go to another committee.

Mr. Mancini: It goes to your friend.

Mr. Martel: Every committee will operate by a different set of parameters. You can refer any report to anybody to look at any appointment. However, you do not want to send it, because you want to structure it. If you are going to review something, there should be a process where one committee looks at all appointments so the process is the same regardless of which appointment you might be looking at.

If you send it to a variety of committees, some of them might look at one once in four years. The process they follow is totally convoluted because you cannot control it. If you send it to a committee after a report is tabled, then you will develop a process.

We might want to be very careful when we finally recommend it and say, "You are going to review it, but here are the factors under which you will review it." It cannot be just maliciousness

or that somebody has a little axe to grind and wants to review that. There will have to be a rationale that makes sense, so that no one is being impish about it and trying to embarrass someone.

There will have to be a solid basis on which a committee decides it wants to review something. Otherwise, it will become pernicious and there will be too many. If you send it to any committee, that is what will happen, whereas if you determine it will be a committee, then if I want to object to something, let us say, there will have to be some pretty legitimate reasons so I cannot create the havoc Mr. Bossy is concerned about. By sending annual reports out for consideration, you are asking for trouble.

11:50 a.m.

Mr. Mancini: Mr. Bossy makes a very good point. The way this proposal is written, I see the opportunity for lots of unnecessary problems. If we accept it the way it is written, during certain political intervals, for example, I can see just about every appointment made being referred to a committee; I can see all kinds of problems developing from this.

I reiterate the concerns expressed by Mr. Bossy. I think he did very well. Before I agree to what we have before us, I think we need some more discussion. We can thrash it around and see if we can come up with something that might be more suitable. I want to lay out my concerns so that next week or two weeks from now you cannot say: "Mancini, we have been talking about this. Why at this late stage do you want to throw a monkey wrench into everything?" I want to be open and up front, and I am telling you exactly what my concerns are.

Mr. Chairman: That is fair. I have no problem with that.

Mr. Turner: Would it be helpful if we took it piece by piece to find out where the objections are? The way I see the process--I hope I am not being naïve about it--is that it gives this committee and others the opportunity if they desire to interview an applicant or applicants for various appointments. It is not mandatory that we or they shall do this.

There is some misunderstanding as to how the process will work. If we were to go point by point down the list to see where the objections are, maybe we could reach a compromise or solution to the objections.

Mr. Chairman: The only real difference from what exists now would be the time limits.

Mr. Turner: Exactly.

Mr. Chairman: We are saying the recommendation would be that the committee has 30 days to make up its mind on whether it wants to review an appointment.

Mr. Turner: It goes further than that, though.

Mr. Chairman: Yes. We are saying too that the appointment is actually made; it is not tentative. You can review

it within a 30-day period and you have 10 sitting days to conduct this review. Those are the real limits we are putting on it.

Mr. Turner: If you forfeit that, it is gone.

Mr. Chairman: Yes, your opportunity to do that is limited substantially.

Since we are not quite in total agreement on this, I suggest we leave it as it is and think about it. If I could point it out to you, the obvious area of altering it would be to say that maybe not all names would go through this process. You might want to decide on categories that would go through this process and others that would go through different ones. You might want to put an infrastructure in the front end of this system, in other words. It is conceivable that you would do that.

To state the obvious, if any committee of this Legislature under existing rules now wanted to call before it a witness who had just been appointed to an agency, it could do so. If members want to have that on the agenda, they can do so. We have done it. The difference would be that we are formalizing this process. We are not suggesting that all appointments go to committees, but the potential is there to do that.

Even with this proposal, you would still have to go to a committee and convince it that you ought to be reviewing that appointment. It is not an automatic thing. You would have to go to a committee, the standing committee on administration of justice or whichever, and say: "There was an appointment tabled yesterday that I want reviewed. Here is a motion to say that we will consider this next Tuesday and that we will call this witness." That vote would have to carry. There is nothing automatic in this. That is the way the process would work, which is not a great deal different from the potential that is there now.

Would this clog up the system? I do not know. I would suspect it would be tried on for size a few times early, and after a while it would not be the great sport some of you anticipate it might be. I do not know. Since it is close to 12 noon, I suggest we leave it as it is. We will come back to it in draft form, where we will have opportunities to put different versions, talk about it some more or argue about it some more. We are not asking anybody to make decisions today. We are just trying things on for size and giving some direction to Mr. Eichmanis when he drafts the report.

Mr. Treleaven: I suggest, as you have, that we knock off at 12 noon to think about things. This afternoon--I will be with Mr. Turner--if the Liberals are having trouble with something in 7, we should try to isolate where the problems are. There are four or five points there. If it is problems with the whole section, that is one thing; if it is problems with just one area of it, let us find out.

This is basic, fundamental stuff. We should not leave it as loosely as you have suggested, Mr. Chairman, to draft up something loosely. We do not even have a meeting of the minds here. I would

like to isolate what the problems are so we can go our ways at least knowing what the differences of opinions are. At this point I am not sure, for example, what Mr. Mancini's problems are.

Mr. Chairman: My concern is that we have been instructed to review how appointments are made and to provide a mechanism whereby these appointments can be reviewed by the Legislature. We have lots of options we can consider as to how we might do this.

Mr. Turner's suggestion is that we put some time limits on it and describe the mechanisms whereby we get these things in front of the House and committees and how that would work. We could have done this in a more elaborate form, but you are right; it seems we are stuck on the basic premise of a review of appointments by committees. We have been told explicitly to make recommendations on that matter. It is the mechanics we are bogged down on.

If you do not like the 30 days and 10 days, or if you want more time or less, or if you do not want all appointments tabled, it would be helpful if we could get some work on that that might assist us. It might be useful to take a break of a couple of hours and come back at 2 p.m. to see whether we want to go back at this again or to set it aside and go on to some other parts.

The committee recessed at 12 noon.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES, BOARDS
AND COMMISSIONS

APPOINTMENTS IN PUBLIC SECTOR

WEDNESDAY, MARCH 5, 1986

Afternoon Sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES, BOARDS
AND COMMISSIONS

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)

VICE-CHAIRMAN: Mancini, R. (Essex South L)

Bossy, M. L. (Chatham-Kent L)

Martel, E. W. (Sudbury East NDP)

McCaffrey, R. B. (Armourdale PC)

Morin, G. E. (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L., (Oxford PC)

Turner, J. M. (Peterborough PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Clerk: Forsyth, S.

Assistant Clerk: Mellor, L.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS
AND AGENCIES, BOARDS AND COMMISSIONS

Wednesday, March 5, 1986

The committee resumed at 2:16 p.m. in room 228.

APPOINTMENTS IN PUBLIC SECTOR
(continued)

Mr. Chairman: Smirle is putting around copies of a letter from the Speaker in response to the decisions we made yesterday about preferring the closed captioning option for question period on a delayed basis. This is basically for your information.

Do you want to continue discussion on the review or do you prefer to set that over until tomorrow and move on to the remainder of John's report? What is your preference?

Mr. Newman: Finish his report.

Mr. Chairman: What I suggest we can do is go through the remainder of the report this afternoon. I have flagged two or three items as being things you want to have more discussion on; we could pick those up for tomorrow.

The next section deals with adverse reports by committees; in other words, how do we handle it when the committee does more than review? It really cannot be a confirmation process. It would be difficult to fit into a parliamentary system, similar to what the Americans do, but there are alternative ways to proceed with it.

If a committee gives a negative report, we would anticipate that at that stage there would be withdrawal of the nomination. It would probably be relatively difficult to function on that on a large scale. You probably would have to target those two categories we had this morning, officers of the House, heads of crown corporations or things like that. In parliamentary experience, the tradition simply is that if you encounter adversity in committee, the government of the day withdraws that nomination.

Mr. Treleaven: It is much more subtle. I favour the one where if there is something negative, procrastination is the nicest way of getting the message across, as they do in the United States. The recommendation just does not come. The message is there in the lack of recommendation. There is not a negative; there is no need to be negative.

If the positive recommendation does not come, it is more subtle and does not get into hassles and accusations. There is no recommendation, and everybody can take the signals nicely. If somebody decides he wants something in writing from the committee, the committee can say, "We are sorry, we are not yet ready to give

our recommendation." It is all done nicely. You are not into accusations, hassles, threatened suits and all this crap, and the message is there.

Mr. Chairman: All this somehow would have to fit into the review process. I suppose the way to do that would be if at the end of 10 sitting days the committee found itself unable to report, the appointment would be deemed to have been withdrawn or something like that.

Mr. Treleven: I am not even sure you need to do that. After a great length of time, if the committee cannot come up with a recommendation, any government would be foolish to blunder ahead without giving it special attention.

Mr. Bossy: Once an appointment has been made and if it has to be reviewed by a committee--

Interjection: Within so many days.

Mr. Bossy: --and there has been talk about public review, if it is a public review that goes on record, we would not have to report. It would be on the record and the accused practically would have been convicted right in the room. I do not know. I think we are treading on very thin ice here.

Mr. Chairman: How would you suggest we proceed, Mr. Bossy?

Mr. Bossy: When we are dealing with the person and looking at his integrity, we would have to bring out in this room, or wherever it is held, that the person is not competent. That is pretty well the only reason an appointment would not go through.

I do not know what legal grounds that person would have to come back, defamation or whatever it might be, with a lawsuit against the government. In other words, his private life would be affected by being turned down on an appointment. I do not think anyone in government would ever be so blatantly out of line as to attempt to appoint a criminal or whatever.

I always come back to conflict of interest, but we need conflict-of-interest people to serve on boards and agencies because of their experience. We have a problem in dealing with this and how to handle a review in committee. It must be reported back because it cannot just be hung out to dry.

Mr. Sterling: I differ very much--

Mr. Chairman: Hold on for a second.

Mr. Warner: There are two things. I want to ask Mr. Treleven whether he was referring to what we saw in Albany where they have made tentative appointments and then held them back because of concerns over particular appointments. The mere act of holding a person back was a signal that there was a problem, and that gave the Governor, in that case, the opportunity to contact the individual and ask the person to withdraw his or her name.

Mr. Treleaven: I was saying I really do not see the appointment being made, the cat is already among the canaries, then a review. I see something preliminary before the appointment finally receives the stamp of approval.

Mr. Warner: I believe there is a role for a committee, but at the same time I would not want to see what I perceived, especially in Washington, to be a personally embarrassing confrontation which in the long run does not serve anyone's interest. We have to find a way to avoid that. At the same time there has to be some way for the committee to review, aside from conflict of interest. You do not necessarily want a developer to serve on a conservation authority--

Mr. Treleaven: Or a gravel pit owner.

Mr. Warner: --somebody who does not have the interest of the role at heart. There has to be a way for us or another committee of the Legislature to take an objective look at that.

Mr. Martel: I like what Mr. Treleaven suggested, that you do not pinpoint the individual when you do not respond. You are just saying the committee appointments per se do not have the approval of this committee. That could be five appointments. In other words, it is a negative response to the whole of the appointments of the committee without identifying why it is.

I think that is what he is trying to say. It is an attempt to signal to government that this committee, for whatever reason, does not give unanimous consent, approval, blessing or whatever you want to call it, without identifying--

Mr. Chairman: The appointment?

Mr. Martel: Yes. When you make an appointment, you do not appoint one person to a board.

Mr. Chairman: Yes. These would all be individual appointments.

Mr. Martel: Let us say they appoint two or three people from the province to the Niagara Regional Board of Commissioners of Police. You could withhold approval of the appointments without spelling out which one you had doubts about simply by not giving a favourable response, which is what I think Mr. Treleaven is saying.

Of course, the argument could be made that you are casting aspersions on all appointees as opposed to singling out the one. One way to look at this is not to point out and say, "Mr. Jones is the one we do not want," but to send a signal back to the government that there is something in that committee's structure we do not like and we are not going to give it our imprimatur.

Mr. Chairman: The other problem I would like you to talk about--this is all subject to working it over again--is that in the process suggested this morning, it was generally held that first and foremost the appointment be made and that subsequently a

review would be held. As far I can see, most of the time the only option would be a withdrawal of the appointment or the resignation of the appointee. We were not promoting a system whereby the appointment would actually be made, which then would be subject to a review so that there is not really a veto in here. Maybe we will have to talk a bit more as to what should be done when a committee puts in an adverse report or makes adverse comments.

The suggestion I have heard so far is that an orderly withdrawal of the appointment would happen. Either the government would say, "We would like to have second thoughts on that" or the individual would say something like, "Thanks, but no thanks." Unless we change what we proposed this morning, technically the committee would not have the ability to make the appointment or to stop it, only to review it.

Mr. Sterling: I am sure every American state and their federal government have toyed with the balances they have set into place in their process. That is why I tend towards their process. Once you are into it, you are into it. I prefer a system that is flexible but has pressures from both sides.

In tune with my political feeling about these kinds of things, I think it is important, particularly in this process, to wrest away from the leaders of the three parties the total power to negotiate these deals. I do not believe that serves anybody's good purpose.

If we moved towards an American system, eventually we would have an effective system of finding good people for the process. What would happen would be that as the process got going and the balances were worked out, you would find names for recommendation would start to funnel through the committee to the government. That kind of thing would be healthy. It would be an important committee of this Legislature that undertook such a function, as I believe such committees are in the state senates.

2:30 p.m.

You cannot have the Premier (Mr. Peterson) or a minister appoint, depending on the kind of legislation or the authority they are appointing on, and then have a hearing. You have to have them make recommendations for appointment and confirmations that come within different time frames, different lengths of time for different positions, that would be put there so that the real thunder of the committee, the confirmation process, would be a delaying technique, either on an individual appointment or in how hard they were working on their appointments.

Mr. Chairman: It is conceivable that a slight variation on this theme would be the way to go. The government would give notice that on June 30 the following people will be appointed to an agency. A committee would then have a 30-day period where it can pick those up or let them ride. If it picks them up, it has another 10 sitting days to deal with them. All this would occur prior to the actual appointments being made. It is conceivable we could go that route.

Mr. Treleaven: What about a slight variation to exactly 10 days? For the one in a hundred that a committee really wanted to question within the time limit of 30 days, it could send a letter requesting an extension of an unspecified length of time to study it. That would be a signal.

Mr. Chairman: That is possible.

Mr. Warner: I find it easier to go through this system if I take an example and work it through from the beginning. I have been throwing this around in my mind I think ever since we were in Albany, because there were lots of elements I saw there which impressed me.

Suppose for a moment that we use Mr. Martel's example; we need an appointment to the Niagara Regional Board of Commissioners of Police. The system could work this way. There would be a staff here which would function as part of the legislative offices of the assembly in the way our clerks and Hansard do. Notice would go out locally to the Niagara region. We would know what we were looking for. We would be trying to get a balance. In this instance, we would know we were looking for a woman, somebody who has some knowledge of or interest in community affairs and police work.

It is open, it is public, and you can apply. The applications come in and eventually end up here with a staff who goes through them. It narrows them down, then puts forward one, two or three names, whatever is appropriate, to the committee for confirmation. The actual choice would not be made public until after you have had a look at it. That avoids the potential of public embarrassment.

At that point, if the committee has any concerns about the qualifications, interests, conflict of interest, financial interests or whatever else, all that stuff can be aired first with the staff and then with a committee of the Legislature. It could be a small committee, a five-person committee.

Mr. Sterling: In response to that, I do not believe any committee would have the time or the energy to do that. The other problem is that you then get into a situation where you are hiring people; you are not appointing people as such. Notwithstanding wanting to make us get the best people and all the rest of that, in a lot of cases--and I do not know whether the police commission is a good example--it is the prerogative of the government to make the recommendation. They then have to stand behind their recommendation of a person who is competent and able to fill that job. If that person is subject to embarrassment, tough; that is part of the game that is played.

There is some validity to the statement of Mr. Bossy that the agencies, boards and commissions in some way have to reflect the government's attitude when it is in government. That is not true in every case. I do not agree it is the case with the Ontario Municipal Board, but there are some situations where it is true if they have a philosophy. Quite frankly, I have never been able to understand what the Liberal philosophy might be, but I think they should have one.

The other part of it, though, is that I am not sure the Legislative Assembly should be doing the job for the government. I think that is the government's job. We are there to act as a check in the process. We are not the government; the Legislative Assembly is not the government.

Mr. Warner: Would you agree with my example if you substitute the government for the committee? In other words, if the job in the Niagara region that needed to be filled were first of all published and if you knew what the qualifications were, and if people had the opportunity to apply and the government through its staff made the selection, which you would hope would be appropriate, and then there was some kind of review of that by a committee. What do you think about that?

Mr. Sterling: What will happen is that if the proper mechanisms are put there to have the pressures placed in the right way when you have a guy sitting there who is a real Neanderthal or a really bad appointment, as in the United States system, a balance will be achieved in the appointment process because of informal negotiations that will come out of it.

I would much prefer it to be that way than to have a large bureaucracy, with that bureaucracy playing the politics rather than the government playing the politics. We are elected as politicians, and I would rather put it in their hands, albeit they are Liberals, than in the hands of a bunch of hired guns.

Mr. Martel: Let me run this by you. It is almost what Mr. Warner said, but there are a couple of things that worry me. Let us take the same example. The ad is placed in Niagara. All the applications are fed back to the group here. They sift through them and then send them to the appropriate minister and say, "Here are the people who have applied from this area." He looks it over and says, "These are my choices." He lists five people, three people, two, it does not matter.

He then sends a note to a committee of members saying, "Please give me your comments," at which time Mr. Treleaven's idea can kick in. If you choose, you can do it in a positive way at the end of 10 days. You can respond and say, "Yes, we agree with the appointment." That is before it has become public. If at the end of 10 days you did not submit a letter saying, "We endorse it," they would know there was not unanimity on the appointment, of the whole thing. That is where the negotiation would start.

I concur with Mr. Bossy's concern. Maybe someone does not like a suggested appointee--he thinks he is a hot dog, it gets in the press and they kick the hell out of him for no legitimate reason, but just because someone does not like him. If we simply had this sent back to a committee, whatever the committee is, and said you have to give a letter of affirmation within 10 days, then failure to get the letter of affirmation would let the minister know there was not unanimity on the committee and he would then--still without any of it being public--start to make the necessary adjustments.

It is a form of veto, yet at the same time it prevents what Mr. Bossy fears, the destruction of people for no good reason. It

prevents people from being pernicious and wanting to take somebody on for some little vendetta. You would have to have a pretty bloody good reason to say no to a minister when he sent his list of nominees based on input from the public. If some committee member says, "I do not like Joe Blow and that is the reason I do not think he should be in," the rest of the committee will say: "Put it in your ear. We are not going to take on Joe Blow because you do not like him. You have to have some bona fide reason." It does not matter whether he has yellow stripes or red stripes, you have to have some good reason, other than some ridiculous old thing.

That is all done so that when the list comes out, you pretty well will have the type of appointment you want. It will be the government making the appointments. It has the choice of whom it sends to you. You have a bit of a veto but it is not public. It is still an open process but you do not destroy people in the process.

2:40 p.m.

Mr. Chairman: I am hearing something here this afternoon that is quite different. Frankly, I am not terribly enthralled with either. I had never envisaged that all the appointments would roll through the committees here. For practical purposes, if it is your intention to do that, you are going to alter dramatically the way committees function here. You are going to preclude committees from doing almost anything else except filling these appointments. To tell the truth, I do not want to do that.

When I think the system has not worked well, I want the ability to challenge, to question and put an appointment that I thought was not appropriate before a committee. I do not want to spend my time running over someone's credentials: Who is a security problem, who is well educated or who is an appropriate appointment to a library board somewhere in eastern Ontario, for example. I have no intention of doing that.

Mr. Martel: The only ones you would look at would be the ones you had an axe to grind with. The rest would just go through.

Mr. Bossy: I have a question concerning all this. According to this, the name has been tabled in the House as being appointed. Who identifies on what basis the committee deals with that appointment, if there is one to be dealt with? Say 100 flash through all at once. Who is the one?

Mr. Chairman: What we are considering here is not a committee to deal with appointments. All along we have said it would be an appropriate committee. The standing committee on administration of justice deals with matters that have to do with justice and the standing committee on procedural affairs and agencies, boards and commissions deals with its matters. This would not occupy a lot of the committees' time; it would be a usual occurrence that, once or twice a year, a committee would review an appointment that had been made.

I have not contemplated that this would take up a large chunk of a member's time; it would simply provide an opportunity

to do that. With appointments to large agencies, when someone is nominated as chairman of the Ontario Human Rights Commission, for example, even if you agreed with the nomination, at that point you would want to discuss what he intended to do, his new direction and what kinds of things were his priorities.

It seems to me that, even though you might not be arguing about whether that person was good, it would be a useful exercise to get some sense of who the new chairman is, his priorities and what changes he intends to make. The same would be true of a new person appointed to head the Workers' Compensation Board; you would want an opportunity to do that, even though everyone thinks he is a great person.

This is another area we will have to come back to tomorrow. After we have thought about it a bit, we will also have to go over other ground. I sense we are venturing off into new turf here that none of us had really considered before.

Mr. Treleaven: I agree with Mr. Bossy. You are suggesting you want the ability to review an appointment or review the situation, and I agree. Like Mr. Bossy, I am uncomfortable with a system that picks out an individual, brings him in and starts cross-examining him--and that is in public--after an appointment has been made. I wonder if there is not some other way; I am throwing it out.

We have this tabling idea, but that is after an appointment is made. Is there some way the minister or the Premier can give notice, a list, of potential appointees? I want a system that will flow by itself and keep flowing unless some committee says, "Hold it; we want to look at something." It goes by itself; the committee does not have to deal with everything. I want it automatic unless we stop it, otherwise we bog down.

We should have some chance ahead of time to get a look at this and combine the review, combine our approval or recommendation or something before it is made so there is not a public embarrassment. I am a little uncomfortable with the appointment being made and then hauling the person back in front of a committee. Then we are right into the American system.

Mr. Chairman: It is not that far off the mark. For example, since I have been a member of here, the head of the Workers' Compensation Board has appeared regularly before a committee during estimates and does much of this; he explains what is happening at the board, what problems we have and what solutions we have. That does not bother me at all, or any other major appointment that may be made, or even the fact that a less substantial position would occasionally be reviewed by a committee. I have no difficulty with that at all.

I would be very unhappy if this turned out to be a private, closed-doors process. That would be dead wrong. Whatever we would do, in the main would have to be a public process. I would not want to sit on a committee that had as a major part of its agenda an in camera reception of information such as security checks. I have done that in municipal life.

One of the most uncomfortable things that has ever happened to me was receiving a security report on someone from a local police force. It was pleased to give it to you in private but would not allow you to use it in public. It is quite a different phenomenon. You have access to gossip, which you should not have access to. They tell you things you do not want to know because they cannot substantiate it. They are embarrassed about the process, because obviously if this were all factual, they would be charging these guys. It is stuff they think they know, that they heard on the street, and rumour has it that this person knows that person.

I caution you against any kind of a private process. There are a lot of imminent dangers there. The best that can be said about a public process is that we know how to deal with it. We at least have the precedents here on how to handle that kind of stuff.

Mr. Bossy: Bad appointments are a good thing for opposition. This is something that is used politically. We have seen it through the years. We have seen it in Ottawa. We have seen it here. As an opposition member, Elie, I am sure you have used that, probably against the government in the Legislature, only in the Legislature you are immune to slander or whatever.

Mr. Martel: You would find it hard after 19 years to find me having raised any of those kinds of crappy issues. I do not think they are worth a row of beans.

Mr. Bossy: If you did not have one of that importance as far as being a bad appointee is concerned, then the government party made all good appointments.

Mr. Martel: No.

Mr. Bossy: Look at what happens in Ottawa. My God, the rat pack went after every one.

Mr. Martel: I have never believed that laundering gained you a vote. It has never been my bent to want to go after anybody who was appointed, because that is bullshit politics in my books.

Mr. Chairman: It might be useful to hold that one over. I have two or three items we hooked on today about which we need more discussion. It might be useful to go on to the last one.

Mr. Morin: Before doing that, would it not be proper to add to this, let us say, someone who is appointed to sit on the board but who is not doing the job he should be doing.

Mr. Chairman: That is right.

Mr. Morin: Should that go there?

Mr. Chairman: If you will remember, we said there has to be some kind of evaluation of the process. Tomorrow I would like for us to (a) to pick up on those things we have designated today as being problem areas we have not quite made up our minds about and (b) to pick up other matters that need to be dealt with by the committee.

I believe you are right that somehow there must be a mechanism deal with an appointment that has gone through the process and the appointee turns out to be not doing the job. For example, let us say you are chairing an agency and it is obvious to you there is a problem; somebody who is appointed to this agency is not doing his or her job. There is no way to get rid of that person now, except to make the person resign or to let the term expire. It may be worth our while to give some consideration to a mechanism that would allow that at least to be reviewed.

14:50 p.m.

The last area John has outlined here is connected to what we were just discussing; that is, it is probably appropriate to try to clarify, as best we can, the procedure by which a committee would do this. One of the criteria is that the committees which review the appointments deserve to have, in some way, whatever information is available on the appointments.

We are right back into what can be a problem area. We have seen other jurisdictions solve it, for example, with respect to security checks, in that some people have access. Usually, the chairman of the committee has access to that and, in some places, has discretion on whether to release that or to hold on to it. He or she has an advantage over other members in that way.

Mr. Treleaven: I am sorry to interrupt you, but I question whether we can intelligently discuss item 9, committee procedures, until we make some fundamental decisions on item 8. We are still struggling with some fundamentals.

Mr. Chairman: I want to get us through this this afternoon. I have asked John to take notes today and to help us go back over these problem areas tomorrow. It is helpful to John and to me to get some sense of where the committee is at on these things. We are going back over some ground we have touched on previously, but it may be different aspects of it. I want to put that out and get some general feedback from you. It will help with respect to planning what we might do tomorrow.

To have some meaningful review would be difficult if you were not given information that the government may have had with regard to putting together the appointment. How you would do that and how much information is a good question. There are not just embarrassing things, but things that may cause us some legal difficulty that we have gone through before with witnesses before committees.

It is conceivable that you would want committees to be able to do their own background checks, although our committees here are not very well equipped to do that, certainly not in the way the American committees are. It has not been our precedent to even involve ourselves in things of that nature. Certain general research is possible, and we have done that, but anything such as a background check is rather difficult.

The thing I point out to you as being important is that the hearings cannot be private hearings. They must, by their nature,

be the same as almost all our other committee hearings: public, with Hansard and with access. To some degree, that dictates how you would handle the hearings. I cannot envisage that you would hold private hearings on these appointments; that is a different thing.

It is obvious you would have an ability to call witnesses, which you have now. It is also obvious you would have to give some accounting, in a committee report, of why you thought this person was good or why you thought this particular appointment should not proceed.

Those are the things you would have to consider in going through how a committee handles it. Again, we are contemplating that this will not be a major part of every committee's agenda. I sense, and I could be wrong, that there is no desire on anyone's part to make it a major part of the agenda for committees. Am I correct on that?

Mr. Mancini: You are correct.

Mr. Chairman: I do not think we want to get that involved in it. Having said that there will be a review, we have to address ourselves to what will be the precise nature of the review, how extensive it will be, what kind of information you will get, how you will get the information, etc. As a benchmark, we should not venture far from any experiences we have had in committee.

Mr. Sterling: I disagree on a major role for a committee. I prefer having one committee in charge of appointments, basically along the American model.

Mr. Chairman: Let me stop you there. I know of no American jurisdictions that have this off to one committee.

Mr. Sterling: I thought the Senate committee was--

Mr. Chairman: No.

Mr. Treleaven: They have a whole bureaucracy, though.

Mr. Chairman: Each committee of the Congress, for example, has the ability to review appointments that are within its jurisdiction.

Mr. Sterling: I prefer one committee in terms of this Legislature, and not the resources development people, dealing with those appointments.

Mr. Chairman: That would increase the work load for that committee. Even if it were not a big occurrence, I could see one committee reviewing appointments and nothing else.

Mr. Turner: That would be a full-time job.

Mr. Treleaven: If you were to give it to the regulations committee, it would eventually become a fairly busy committee.

Mr. Turner: It might give them something to do, with respect.

Mr. Chairman: That is an option.

Do you have any comments in general about procedure on how a committee would carry through?

Mr. Sterling: I would put it that way. If you want to change the process, that is what you have to do.

Mr. Bossy: I find myself really troubled that hearings would be open to the public.

Mr. Chairman: Are you advocating private hearings?

Mr. Bossy: If we are going to go this route, we have to look at this carefully.

Pretend there is a guy you want to interview. What kind of dirty linen do you want to bring out here, in public? You are going to ask questions. How far do you go on your questions, or are we just going to have the niceties?

If we are to put this person on the spot, when we are not and have not always been sure of the evidence that we have to bring him here, we have to have very solid evidence of why we want to ask those questions of him. That person is put on the spot right here. In other words, if he has ever looked at another woman and his wife does not know about it, he will have to tell us this.

Mr. Chairman: Can you envisage that anybody chairing a committee here would allow that type of questioning to go on, Mr. Bossy?

Mr. Treleaven: I want to carry on from what Mr. Bossy was saying. You take these points; the first, third and fifth. It is going to be held in public with the power to call witnesses. It says we get all background material on the appointee. If there is something a little sleazy in his background, if it is in public, are we not going to say: "I read in the questionnaire which you filed in the materials that have been given to us in public that you did da-da-da on such and such a day. Now is that correct, Mr. Jones, or Brown or Smith"?

The last point says the committee will give reasons in public for approving or rejecting the appointment. The only adverse thing that has come up is that yes, he has a past; he has a bad drinking problem, he was convicted for possession of marijuana or something. You must reject him and give reasons? Are we ever getting into heavy water there.

Mr. Bossy: You are not going to have many people who will let their names stand.

Mr. Chairman: I have been a member here for 10 years and I have never heard of evidence of that type being used in a committee. I have never heard of evidence of that type being allowed by the chair to get on the floor.

Mr. Treleaven: But it is on the record and it is given to us.

Mr. Chairman: I have never heard of any member doing that, and I have been here for 10 years. I have never seen people go off into a committee and use that sort of information publicly or privately.

Mr. Mancini: I want to follow up on my colleague's point. There are some portions of people's lives which they want kept private, whether or not they wish to serve on a public commission.

I will give you an example. I see this, in particular, in regard to a person's health or some illness the person may have had in the past. For example, it is common knowledge around the Legislature and in the constituency that four years ago, I suffered a bout of viral encephalitis. One of the side-effects of the encephalitis is epilepsy. I am a public person; that is all in the public domain.

Do you mean to tell me that if someone else was appointed to a commission and that person wanted to keep private the health side of his or her life, he or she would have to come here and make a presentation before the commission? I could see these questions coming up, "How is your health?"

Mr. Chairman: I cannot envision the grounds on which the chair would allow a discussion of private medical records.

Mr. Mancini: The chair can be overruled.

Mr. Chairman: Try it, punk. Seriously, though, I cannot see how that would happen.

3 p.m.

Mr. Mancini: A lot of things could come up that we do not plan on. I am trying not to be negative today and it is not coming out that way. I am trying to be helpful.

Mr. Chairman: You have a legitimate point. Somewhere in our discussions of this, we should indicate very clearly what we believe. We are supposed to be looking at freedom of information and protection of privacy. One of our major concerns ought to be that there has to be some protection of certain kinds of records. I do not know for the life of me why medical records or records of that kind would be suitable to use in an appointment process. Even in the United States, where they are hot and heavy on this, I am not aware of occasions when they have done that. They have tried to nail people on security matters; it would be tough to do that.

Mr. Mancini: They have tried to nail a lot of people who have visited psychologists. That is a known fact. If they hear a whisper that someone has ever had to visit a psychiatrist or a psychologist for any kind of depression, that is one of the first things they try to bring out. That is a known fact, and I think you should be familiar with it.

Mr. Chairman: They do a lot of things we do not do. I do not think that is relevant information here.

Mr. Sterling: It is absolutely amazing Mr. Mancini would say that when his party and the New Democratic Party, during the Re-Mor and Astra Trust matters, wanted to go into a lockup, look at police records and investigations and use those in a committee in a very political way, leading up to an election.

Mr. Mancini: We were talking about criminal activity in the Re-Mor matter. Let us be realistic. People we are going to appoint to commissions have not committed fraud and tried to defraud thousands of people of millions of dollars. Get serious. There is no comparison whatsoever.

Mr. Sterling: Most of the witnesses in the Re-Mor matter had not committed any crime; they were there as witnesses to the hearing. That information, which could have been very harmful not only to Carlo Montemurro but also to all the other people involved, was in the hands of all these members. There was no breach of trust during that particular procedure of which I am aware that caused any problem.

Mr. Chairman: We are getting into the problem the federal House tried to deal with and has run afoul of as well. That is what I was talking about a bit earlier.

In matters of security checks done by police forces--in other words, investigations where no charges have been laid--it is very difficult information to deal with. In the hearings on Re-Mor that were held here, there was a lot of information brought in under security, some of which was used and some of which was not.

It is an awkward position when you are dealing with security information and no charges have been laid. It becomes reasonably simple once charges have been laid or someone has been found guilty; it is then a matter of public record. However, until that point, all this stuff is difficult to handle. I think we have to address ourselves to that.

Mr. Sterling: On the major decisions, if you are not willing to put yourself up to scrutiny of that nature, you should not be appointed to a public position where you are perhaps in a position to influence things in this society and to spend public funds.

Mr. Turner: Then you will not have anybody applying.

Mr. Sterling: Yes, you will; lots of people will apply because most people are not frightened of their records. I would not be. You could stand me up in front of this committee.

Mr. Turner: Careful.

Mr. Chairman: Shall I put that to a vote?

Mr. Turner: Yes, please.

Mr. Sterling: That is just part of it. It has to be public; that is an absolute necessity, in my view. There has to be some jeopardy to the individual and to the government to make it meaningful.

Mr. Chairman: We covered all this ground in our report on witnesses. We know there are problems, but we also know there are ways to handle them.

Mr. Warner: Some of what Mr. Mancini raises is very real. I hope that, among other things, we will change the direction of some of the appointments. For example, in New York state, where there is a psychiatric institution, on the board they also have a former patient or an immediate relative of a former patient. It is part of the mandate of that board. If a former psychiatric patient who also happens to have worked steadfastly for a particular candidate or party ended up in front of a committee, there would be a heck of a temptation for someone to go after the person's mental health.

There are a couple of principles. If you end up with a committee hearing on an individual that has to be public, there is an obligation. The trick is to see how you can minimize the times when a public hearing is necessary.

I will back up a bit. If you have a system that is public knowledge--it is advertised publicly, you know what the criteria are and you know what you are looking for. You have a data bank, which obviously has to be constructed, so you are sensitive to all the things you mentioned before. You are sensitive to the appointment of women, minorities, non-Anglos, native people, francophones and disabled people.

You know what you are after; it is public and publicized. For starters, that is a clearinghouse in itself. If those appointments are flowing through the government, the ministers, the cabinet or whatever, and coming to a committee for its opinions, and if the committee for whatever reason is displeased with the appointment and in that case the government, the names may simply be withdrawn.

What you are doing is minimizing tremendously the number of times when you actually have to have a hearing. The principle is that if you end up with a system whereby you have a hearing, it has to be public. I do not think you can avoid that. I know what I do not want. Quite frankly, I was horrified at what I saw in Washington. It is a media circus.

Mr. Mancini: That is all it is.

Mr. Warner: The poor slob is in front of the cameras grinding it out. It is not the members, although the members are bad enough. It is the media that hound the person; they do not have any bounds.

For the most part, the members around here have a certain sense about what is right, what is wrong and what is unfair in a position of power. The media can go after the person relentlessly.

They are the folks who are going to go after this poor soul in front of us, probably worse than the members, and that is what I do not want.

As far as disclosure is concerned, my guess is that if we make it really open by publicizing it and so on, we can really de-emphasize it a bit. I would like to see a financial disclosure signed by someone to show there is not a conflict of interest. Perhaps you should sign something indicating you do not have a conflict of interest.

I am not sure a security check is necessary. I look at the experience. Why are we changing the process? It is not because we have had a bunch of crooks. We are changing it because of the crass political nature of the appointments, not because people are crooked or have unsuitable backgrounds.

Mr. Mancini: On security checks, I believe it was pointed out by the police association that in the case of police commissioners, it might be advantageous to give them some minor check. That is all I had intended earlier on.

Mr. Warner: That is fair enough. I do not want to go on too long on it, but I was on the committee when we had the Re-Mor stuff. I will tell you candidly that I refused to go and see the material. I did not want to see it. I was not the critic, but I was on the committee. I thought one person from our caucus should go to see it, but it was not going to be me.

3:10 p.m.

I am placed in an unfair advantage position. It does not matter what I say in this microphone; I am not going to be sued. I can use that material, which may be unsubstantiated, and I can slander some individual's life and career. I do not want to see that stuff. I want to base my questions in a committee on what I hear and on what testimony there is.

I was very nervous about seeing that stuff. Quite frankly, I do not particularly want to see a security check on some individual with all his personal medical history. I am not sure that is any of my business.

Mr. Sterling: That was true in the United States, the security stuff, was it not?

Mr. Chairman: Yes.

Mr. Warner: One from each. I think they had one Republican and one Democrat.

Mr. Chairman: It was usually the chairman, who is these days a Republican, and the vice-chairman, who is a Democrat. It is reversed in the other House.

Mr. Treleaven: What is even worse than seeing it is having a security check and having information that obviously, if you knew--and maybe the chairman knows--makes the person entirely

unsuitable and not bringing it up, either because you do not want to, you are afraid to or whatever. The fellow gets confirmed or appointed and that information made him obviously unsuitable. It might be something to do with children; perhaps he had a child molestation charge two or three years ago.

Mr. Mancini: In relation to what Mr. Treleaven says, what if he has that kind of charge and he is found innocent? That is even worse.

Mr. Turner: Yes.

Mr. Sterling: What happens in those cases is that he goes to the Premier and says, "Do you know about this?" That is how it happens in the United States; the informal pressure comes even before the committee gets it.

Mr. Warner: One of the things I learned in the United States was that while they have an interesting system--and in some ways it is superior to ours in that they have categorized everything--the general public is not that aware of the appointments system; it is not public knowledge. Although it is a public process and it is fairly open, other than the congressional hearings or whatever they call them in Washington, the general public is not that aware of the system and how it functions.

If we take pains to build in a process that is publicly open, accessible and understood so the public feels it can participate and wants to participate, we get rid of a heck of a lot of problems. Then if we use the kind of system where a committee can send a message back to the government prior to any public appearance, we almost eliminate the need for public appearances.

Mr. Chairman: If I may intervene for a minute, you would simplify the system if you said, "First, the appointment is made before a committee of the Legislature does the review." Then all this can be done privately; it can be done by the government. At that point, should the government put forward a nominee and actually appoint him to an agency, the government has considerable risk on its side if it is aware of a security problem or some other kind of problem whereby the appointment should not have been made.

If you go to a process whereby it is a committee that actually makes the nomination, then the committee has to assume the obligation of all this kind of stuff. It becomes very difficult to handle. It is not that it cannot be done, but anybody here who has been on a municipal council has gone through the agony of this. You get presented with information that would not stand up in court. It is not really hard evidence. It is somebody's opinion. It is somebody's impression. It is someone turning rumour almost into a fact.

If you do that publicly, you have a major problem on your hands. It is almost like a sorting process. It becomes a committee of a council. It recommends for taxi licences. Everybody else knows, "They had a chance to get a report or a security check on

that person," but the security check is not on the agenda in terms of the public debate on the matter. That is the problem.

Mr. Treleaven: What I am reading is that this committee in its deliberations now, at bottom, has to make the basic decision on who takes on the responsibility of appointments, either the Premier--the way it has been--or another body such as a committee of this Legislature. One or the other takes the basic responsibility. If it is the government and some committee reviews it, that still means the great bulk of the responsibility, 99 per cent, is in the hands of the Premier or the government.

If we do not want that, then we have to move over here, where basically it is taken out of the government's and the Premier's hands and put in some other committee. That committee is going to have to set up a whole structure to replace what we have had in the past. Call it political structure, if you want, but we must have a whole structure set up over here to replace it. That committee cannot pick and choose. It either fishes or it cuts bait. It either takes responsibility for the system or it does not. I do not think we can have anything in between. We have to decide which way we are going.

Mr. Morin: The Premier should always have the prerogative to appoint whomever he wants, not necessarily only the committee.

Mr. Chairman: To take the two points here, as John did in his memo, there is no problem if we are talking about 10 positions of officers of the House. That is not a problem.

However, if we are saying in the case of all the appointments that are made, the 2,400 of them, that a committee of the Legislature takes on the job of actually saying, "We nominate somebody to the Legislature to do this," then it takes on the responsibility of the security checks, the background and all that, which is very difficult for it to do operating in public.

That is basically why you would go to what John has suggested here, that for the vast majority of these appointments the initiative is technically in the Premier's office. It may come from a minister or from somebody else, but it comes by order in council and the appointment is made. Then the committee of the Legislature reviews that. It is the practical aspect that is causing the problem here.

Mr. Warner: I do not have a big problem with that. If we put in those basics I mentioned before, if it is an open system and is perfectly understood and if the appointment process is sensitive to all the criteria--

Mr. Chairman: There is no difficulty with that stuff.

Mr. Warner: All right. If you do all that, the government of the day would be foolish indeed, because of the fact it is an open system, if it ended up appointing all Liberals to the 2,400 positions.

Mr. Chairman: Nominating.

Mr. Warner: That would not take long to get around.

Mr. Chairman: It has been done in Canadian politics before, you know.

Mr. Warner: I know, but that is what we are trying to cure.

Mr. Chairman: I sense we have kind of wound down for the day. In going through John's report today we have identified some major sections where it is pretty clear to me that we need to have some more discussion: selection, review, adverse reports and committee procedures.

I suggest that tomorrow we go back to those areas and see how far we get in developing a consensus. In some areas we are close enough that John could probably go away and draft the report and we could say "Yes" or "No," move amendments or whatever. However, I sense the committee still has not given him enough direction in those areas.

I have asked John to listen today and, if he can, to give an outline of what may be useful to consider as alternatives. Frankly, I have listened to the discussion today and I do not think what John put in his original memo is far off being a reasonable and practicable way to proceed. We should adjourn for the day and pick it up again tomorrow to see how far we can get.

Mr. Warner: Did you deal this morning with the review of credentials?

Mr. Chairman: Yes.

Mr. Warner: Did the committee come to a consensus?

Mr. Chairman: We do not have a hard draft ready for that, but we agreed that the agencies, for example, should provide more information on what they expect of people. In its appointments process, the government should make the criteria a little clearer. We can develop that. That is not a big problem.

The committee adjourned at 3:19 p.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES, BOARDS
AND COMMISSIONS

APPOINTMENTS IN PUBLIC SECTOR

THURSDAY, MARCH 6, 1986

Morning Sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES, BOARDS
AND COMMISSIONS

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)

VICE-CHAIRMAN: Mancini, R. (Essex South L)

Bossy, M. L. (Chatham-Kent L)

Martel, E. W. (Sudbury East NDP)

McCaffrey, R. B. (Armourdale PC)

Morin, G. E. (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L., (Oxford PC)

Turner, J. M. (Peterborough PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Clerk: Forsyth, S.

Assistant Clerk: Mellor, L.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS
AND AGENCIES, BOARDS AND COMMISSIONS

Thursday, March 6, 1986

The committee met at 10:15 a.m. in room 228.

APPOINMENTS IN PUBLIC SECTOR
(continued)

Mr. Chairman: Let us get started. Let us back up and go over a couple of things about which the staff needs a little help in drafting.

The first place where I noted a small hook in the system was that in defining the officers of the assembly, we went with the standard chief directors--the Clerk of the House, the first clerk assistant, the Sergeant at Arms, the administrator and the executive director of the library. There was some indication from one or two people that you wanted to expand that. If you want to do that, we have a slightly larger list.

My difficulty with it is, for example, that I am not sure I see the director of information services, which is the next level you would get into, as someone who is directly an employee of the members. You would be getting into the director of human resources, the director of finance, the manager of parliamentary public relations, the editor of debates, the committee clerks and the directors of library branches. Yesterday, I made a notation that this was the first occasion we ran into a lack of consensus. Can we entertain some discussion about whether there are enough members who want to expand it to include that in the draft?

Mr. Martel: I would cut one; I would not add. I would not put anyone outside of the Clerk, the first clerk, maybe the administrator because he is on a par with the Clerk of the House in terms of reporting to the Speaker, and maybe the Sergeant at Arms, if he gets greater powers under the new rules and is responsible for the entire building--he is to some degree now--as a result of the Quebec experience. Having served on the board, I state this from that premise.

To decide who the chief librarian will be is a role I do not want. Surely it is the same as for clerks, for which you advertise. A short list recommended by the staff and so on comes before the board. Beyond those first four, I do not think we want to get involved in anything. That is my own personal opinion.

Mr. Chairman: Is there any other comment?

Mr. Treleaven: I am with Mr. Martel in that it is a long enough list. In what way are we going to get involved? We are back to the basics, back to the fundamentals. We have not decided.

Mr. Chairman: Let us go one step at a time. I am going

to try to get you to stay on top of things today. I know it is all interrelated and tough to pull apart. I do not want to have the same argument today that we had all day yesterday.

Mr. Treleaven: What are we going to do with those four? We have four names.

Mr. Chairman: These are in the classification of people who in effect would be recruited, interviewed and recommended by a committee of the Legislature to become employees of the members.

Mr. Treleaven: They are not placed until the committee meets and recommends them.

Mr. Chairman: This would be the group of people who, from start to finish, are not just reviewed but recruited, interviewed and recommended for employment by a committee of the Legislature.

Mr. Treleaven: The government cannot fill those positions until--

Mr. Chairman: No. These are not government appointees.

Mr. Treleaven: Neither the government nor the Legislature can fill those positions until that committee reports.

Mr. Chairman: That is correct.

Mr. Treleaven: You are hiving off category one with these four positions.

10:20 a.m.

Mr. Chairman: That is correct. If there is an argument for leaving in the fifth position of executive director of the library, at least in the draft, I remind you that in our previous report on setting up different types of committee activity, one of the things we talked about was the obvious need for someone to co-ordinate research officers for committees.

You may recall from our report and recommendations that in a theoretical sense the model would be that this be done in the office of the Clerk. There would be some type of director of research there. I am aware there has been a fair amount of discussion about why we would do that when we already have a research department with a director in the library. If there is an argument for leaving it in the draft, it would probably be until such time as that decision is actually made, it may turn out to be the executive director of the library who is responsible for all the research done by committees. That would change the nature of the job somewhat.

I advocate that we leave it in for now. That is the way the draft goes. If we want to pursue it further, we will take it out when the draft--

Mr. Martel: Are you are involved in drafting the new rules?

Mr. Chairman: Yes.

Mr. Martel: When you are drafting the new rules, because it is all flexible anyway, I hope you will ask the committee to make a change in what was recommended so that the research for committees comes from the research department of the library, not from the Clerk's office.

Mr. Chairman: That is what I just said.

Mr. Martel: The report says it is in the--

Mr. Chairman: I just explained that.

Mr. Martel: I thought I listened to you carefully.

Mr. Chairman: I said that in theory our recommendation said it would go in the Clerk's office, but in practice there seems to be a lot of discussion saying that for practical purposes we already have an existing group of people and that we might as well utilize them. That is the most likely scenario.

I take it that we do not want to expand this. We will leave it as is. That is the way it will get drafted. The next area where I sense we did not have--

Mr. Morin: How was it done in the past?

Mr. Chairman: For those positions?

Mr. Morin: Yes.

Mr. Chairman: It has been changing in the not too distant past. To be blunt, there was no known process for it. No one knew how any of those positions were filled; they were simply filled.

In the recent past, there has been a bit of consultation and involvement with the Board of Internal Economy where the Speaker has said, "There is an opening coming up here," and the board has discussed it. Members were not generally made aware of that unless their representative on the board chose to discuss it in caucus. To be polite, there was no formal process for any of those positions; they were simply filled.

Mr. Treleaven: In fairness, it did not come up very often.

Mr. Chairman: That is right.

Mr. Treleaven: The Clerk of the House is replaced every 40 years. The first clerk assistant disappeared and nobody has replaced him for five years. The Sergeant at Arms has been here for seven, eight or 10 years. The administrator came about the

time we did, five years ago. It is not something that has happened often enough to have any procedure.

Mr. Chairman: There is one other little point you may want to consider here. Do you want us to try to put something in front that would provide for some review mechanism? There is some argument that once an appointment to any of these positions is made, it is an appointment for life. For example, when the appointment of a Clerk is made, it is not clear whether that is something that is even reviewable by anyone. There are some who read the Legislative Assembly Act and say, "Once that appointment is made, it can never be taken away from a person." A person could resign or something such as that could happen.

Mr. Martel: They do not even have to retire.

Mr. Chairman: It is not a view that is shared by everyone, I might add. Would you like us to try to address ourselves to that for these kinds of positions?

Mr. Martel: Yes, such as age limit.

Mr. Chairman: We would not put in a mandatory retirement age limit now that it is going to become unconstitutional, but some review mechanism.

Mr. Morin: For instance, the Ombudsman, who is appointed for 10 years, can only be dismissed for cause. His term cannot be longer than age 65. It could be the same; I do not know. We want to assure continuity in the House. A man such as Mr. Lewis, who has been here so many years, knows the House inside out. Do you not agree that is what we want to ensure?

Mr. Martel: Some of us have a different position on the impartiality of certain people around here.

Mr. Chairman: In the report we will try to do address ourselves to that and make an attempt to draft some options that you can decide about later on.

The next area I sense we need to take a second run at is the matter of where the applications would be sent. At the end of our discussions yesterday, I sensed that you did not want it to be within the Office of the Premier and that the collation of nominations from all sources should be done somewhere else. Obviously the Premier's office would have access to that, would have a major impact on it and would make the actual choice in most cases. However, there seemed to be some feeling you wanted it set apart somewhere else.

Mr. Treleaven: We are going for a new, open system. Supposedly, it is a new day. Since the appointments process has a smudgy reputation, for appearances' sake it should be a separate office, as impartial and as impartial appearing as it can be under the circumstances.

Mr. Chairman: We also want to be clear that this would not be the office that makes the appointments.

Mr. Treleaven: No.

Mr. Martel: It would make no appointments at all.

Mr. Chairman: This would be an office that would only collect nominations, keep information, run data banks and provide access for suitable people such as members. The Premier's office would be making appointments and things of that nature.

Mr. Martel: It would not even recommend. I want to stress that. It would not even make a recommendation as to who should be selected--nothing.

Mr. Bossy: I am going to have an awful time agreeing to the setting up of a new bureaucracy.

Mr. Chairman: Let me address that point. I did not hear anyone ask for that.

Mr. Bossy: We are looking at number 1 of point 2 of the memorandum.

Mr. Chairman: I did not hear anyone ask for a new bureaucracy. What I heard members discussing was that they wanted to put--

Mr. Bossy: You just did.

Mr. Chairman: No; excuse me. I heard members saying they did not want it to be in the Premier's office, that they want to use an existing facility such as the office of the Clerk, the legislative library or something such as that. We will try to find the most appropriate place to take on that responsibility. We are probably talking about one or two people to run a computer system. That is essentially what it would be.

Mr. Bossy: It might start off that way.

Mr. Warner: Perhaps it will need three or four. The point is to have an appointments office. It is not a bureaucracy, Mr. Bossy.

Mr. Martel: It cannot be put back into the Premier's office. What you would have is exactly--

Mr. Warner: That is the source of the problem.

Mr. Bossy: If we are identifying areas, looking at number 1, I could accept it going to the Speaker. It is all related to him. If the Speaker is going to have more power, if he is supposed to be nonpartisan and if he has to be in the Legislative Assembly building, then the applications for these positions, if they open up, could go to him. He would send them to a committee for review. He is the head of this Legislature.

Mr. Chairman: All right; that is another suggestion I had not thought of.

Mr. Warner: The Speaker's office.

Mr. Martel: Do you want to use the Speaker's office for everything?

Mr. Treleaven: It is not a bad compromise.

Mr. Martel: He would send it out. He would collate it. You are saying he would put all the information together through some staff into a data bank. Then everybody would tap into it. He would make sure it is done.

Mr. Bossy: You are grouping already. I am addressing subparagraph 1.

Mr. Martel: That is what I wanted to clarify. I thought you were saying only number 1.

Mr. Chairman: The rest of the committee is saying more than that. It is saying all nominations for appointments to agencies will be collated at a central place. The argument now is about the most appropriate place. The general feeling seems to be it should not be in the Premier's office; it should be somewhere else.

Mr. Warner: Right.

Mr. Chairman: We have had suggestions of the Clerk's office, the legislative library and now the Speaker's office. It seems to me any one of those three would be seen as relatively neutral and would not pose a problem. Is there a preference?

Mr. Martel: I would say the Speaker's office, because it is the most neutral of all.

Mr. Warner: It is also more high profile in the public's mind.

Mr. Treleaven: Yes.

Mr. Martel: The Speaker would collate it.

Mr. Chairman: Is that acceptable?

Mr. Warner: We hope the Speaker will be even a little more important when we are televised. The Speaker will be on television all the time.

Mr. Martel: He would just be collating it.

Mr. Treleaven: By its very definition, the Speaker's office is the most impartial of all.

Mr. Warner: It is a good suggestion, Mr. Bossy.

Mr. Chairman: I smell a consensus here. Do I have it?

Mr. Bossy: More power for the job.

Mr. Chairman: The Speaker's office would do that. These would be all the people who are nominating, members, community groups and ethnic groups who would say: "Here is Joe Blow. He is an excellent person. We think he would serve you well on a government agency; here is his résumé." Someone has to keep that information.

Mr. Martel: Let me ask you a question. Do you want to put it back in the Premier's office?

10:30 a.m.

Mr. Martel: Do you want to put it back in the Office of the Premier?

Mr. Bossy: No. First, the Speaker has more power.

Mr. Morin: You are talking about number 1?

Mr. Bossy: Number 1.

Mr. Martel: We agree on number 1.

Mr. Bossy: You agree on number 1, but I would never want to have the Speaker put in a position where he has to make a political decision.

Mr. Chairman: He would not.

Mr. Bossy: He would be indirectly perceived as--

Mr. Treleaven: The Speaker does not do any of that stuff.

Mr. Martel: Mr. Bossy, you are missing the point we are driving at. May I try to run it by you carefully? The gathering of information now rests with the Premier's office. Maybe some cabinet minister gets a recommendation, but ultimately it all churns its way down into the Premier's office and an order in council is drawn up. That is how it happens. Everything gets fed in to a cabinet minister or to the Premier's office.

We are saying the Premier and the various cabinet ministers who are going to make appointments must get that information. To make it appear to be neutral--not just to be neutral--in terms of it being open to everyone, somebody has to gather that material together. Every time somebody writes in--

Mr. Bossy: Two thousand and some odd applications.

Mr. Martel: That would probably be 10,000 applications a year. We are saying those 10,000 applications should go to someone who is perceived to be neutral, who puts them on a computer and then forwards them to the appropriate minister or to the Premier. If you are talking about appointments to the Ontario Police

Commission, they would go to the Solicitor General. All the applications of the people who applied for an appointment would go to the Solicitor General.

If it were for a hospital board, one of the county boards or a health district board, all the names and the information would be forwarded to the Minister of Health. We are saying the committee that should receive the material does not make an appointment and does not offer an opinion. It is totally removed from anything except gathering the material and making sure it gets to the appropriate minister or to the Premier.

If the chairman wanted to find out whether an application to the health board was received and sent on, he could phone the office--he would know who to phone--and say, "Did you forward that application from Joe Schmuck to the appropriate minister?" If we tie in our computers, which we are all going to have within two years, he can crank it out. He does not even have to phone. He just checks to see who is on the list and there it is. "Yes, the application for my guy has gone in." Then the ministers or the Premier decide.

We are not saying there is a structure. We are saying we may create a new structure of two or three people who compile and forward and that is all. Now I would like to know what your concern is.

Mr. Bossy: It is the very nature of setting someone up and who that someone is going to be.

Mr. Chairman: That is right.

Mr. Bossy: That troubles me somewhat. I am not saying we should go by the status quo, but at present applications for appointments to boards, agencies or commissions that fall under the jurisdiction of the responsible minister or that are relevant--there is a group under the Premier that does not fall under a minister--are currently going to a person or persons within each ministry. They have those people in place.

Mr. Martel: What a bureaucracy you are talking about.

Mr. Bossy: They are already there.

Mr. Warner: That is what we are trying to change.

Mr. Martel: Maybe we could reduce the number.

Mr. Bossy: They have to go there anyway. You are saying they should go first to the collection agent and then be sent back down. Let us get this straight.

Mr. Chairman: Maurice, could I interrupt for a moment? The relevant point for most people is not whether the minister has a list in his office of people he might want to appoint, but that it cannot be a private list. We are talking about a list to which all members have access.

Mr. Bossy: That is what I wanted to say further. Let us say the Ministry of the Solicitor General receives these applications. The person who is there now has that list. You can get verification. You can get a printout or a computer reading.

Mr. Chairman: I cannot.

Mr. Bossy: That is what I am saying. Let us recommend that this be opened up. If this is opened up, you can check with the Solicitor General's office and ask: "Did that application go in there? Is it on the list?"

Are the members here going to say that we are redundant? We have been elected by people.

Mr. Morin: Where is it funnelled first?

Mr. Bossy: I have to go back to the agencies, boards and commissions that have been opened up. The defined areas of all boards, agencies and commissions that fall under the Solicitor General, the Minister of Health and different ministers have to be identified. The lists should be public knowledge so that all the people in one's riding know exactly which ministry it falls under. The members know it, but do the people know it?

The constituency members of any party would still have it. I was going to add something later on because I want to float another idea of handling that.

Mr. Martel: There is a problem in what you are suggesting. You are saying the public should know whom to write to. You are going to have to know whom to write to in every bloody ministry.

I have been here 19 years.

Mr. Bossy: To you.

Mr. Martel: Let me finish. I do not want them to write to me, for Christ's sake. I want them to know who they can write to. If you are saying the public has to know whom to write to in 26 different departments, that is a crock.

Mr. Warner: They will never know.

Mr. Martel: My God, you are better off having one office. Then they know it goes there, no matter whom or what jobs they are applying for. Then it gets to the appropriate place.

Mr. Bossy: And it gets lost.

Mr. Martel: No, it does not. It cannot get lost.

Mr. Warner: How could it get lost?

Mr. Martel: You are going to put it on computer right away. That is why our computers will be attached to what they have. We can find out whether they have submitted the name to the

minister. That can all be coded to find out whether it has been forwarded to the minister. If it has not, then somebody gets his dinghy in the wringer.

The Acting Chairman (Mr. Treleaven): Is that parliamentary?

Mr. Martel: You really have a dirty mind, coming from Oxford county. You want a system that is not open. I have been here 19 years and I would not know whom the hell to write to in one ministry, nor have I ever known.

Mr. Bossy: There was an election on May 2 and there is a new government. You have been here for 19 years.

Mr. Martel: Now you want to retain the status quo. If you want to make it easy for the public to participate, an applicant should not have to come through his crazy member of Parliament, whether it be a New Democrat, a Liberal or a Conservative. He is not involved politically with any party. He wants to write someone to say: "I want to offer my services. I want to put my services forward because I am a concerned citizen. My concern is in this field."

If you read the blue book, just pick up the Bell Canada telephone book of your riding when you go home tomorrow and try to sort out what it says. We have been trying for five years at the board to make those blue pages readable. We cannot even find things, and we are involved every day.

Do you want somebody in the public up in the boonies of northern Ontario to know whom he is going to write to in the Ministry of Government Services to get on the Royal Ontario Museum? You need a wishing wand if you think the public is going to get that sophisticated.

I have been in this business for 19 years and I still get mail sent to me in Ottawa. You want them to write to 26 different ministries to submit an application for a bloody job? Shit, man.

Mr. Bossy: It is one. If it is you, it is one.

10:40 a.m.

Mr. Martel: No. I do not want them to write to me. They can write to you if they want. On the other hand, if they are not political, they might want to put their names forward as serving mankind. However, to have to go through me or you is crazy.

Mr. Warner: That is patronage.

Mr. Martel: That is not a change from the present system at all. It is smoke and mirrors.

Mr. Bossy: It has to be a free filtering system.

Mr. Martel: No, that is up to the minister himself.

Mr. Mancini: Let us go to Manitoba and see what they do there.

Mr. Martel: I can tell you a lot of things that we should do here that might be done in Manitoba, such as auto insurance. If you want to get into that, I think it is a silly argument.

Mr. Mancini: What else should we do?

Mr. Chairman: Let us offer Gilles a chance to speak.

Mr. Morin: When I was elected an MPP, I was given the responsibility to represent my people in my riding. I have been elected and now I represent everyone and I know that. Elie, you have dedicated 19 years of your life and you know all too well what I am getting at.

There are no reasons whatsoever for us as members to publicize our services. One of them could be the fact that people will write to their MPP for an application. Elie said there are people who are afraid to approach a member because the member is NDP, or they may be afraid to approach me because I am Liberal. It is up to me to tell the people that I am approachable, I am accessible, and to come and lodge their application. Here is where the role of the MPP enters into the picture.

To go aside a bit, let me give you an example. I recall very vividly an application we had for an investigator in the Ombudsman's office. I had more than 400 applications. One of the applications said: "I look at--what is his name, the actor, the lawyer?"

Mr. Warner: Raymond Burr.

Mr. Martel: Raymond Burr.

Mr. Morin: He said: "I look at Raymond Burr. I feel I have that talent. I like an investigation and I feel I can fill that job."

Mr. Warner: Well qualified.

Mr. Morin: "I am well qualified to do the job." My responsibility then was to screen and filter those applications. That is where I see the role of the MPP.

Mr. Martel: No.

Mr. Morin: Let me finish, Elie. You will have a chance if you do not agree with me. The MPP's responsibility would be to filter all those applications. Sure, I may know some people and I may know they are concerned because they are NDP, but based on my integrity, if the person has the qualification, I will send that list of names of people to the minister. Then it is his responsibility to present names to the cabinet. If he has to defend the fact that he used patronage, if he was not there, then

let him face the responsibility and let the Premier face it. You must give him that responsibility.

Mr. Treleaven: Let the minister face it.

Mr. Martel: Let me try it again on you. Let us try to get it clear. We are not suggesting the minister does not do it.

Mr. Chairman: Elie, you had a chance to make your point.

Mr. Treleaven: You are not successful; you do not seem to be getting through the wax.

Mr. Morin: Elie, if you were my MPP and I wanted to apply for a nomination, I would go to you. I would ask you. I would say, "Elie, do you feel I have the ability to fulfil that job?" You would say: "You do not have much of a chance. You never had the experience. You are wasting your time." You would be honest enough to tell me that.

Mr. Martel: Yes, that is true.

Mr. Chairman: Your problem, Gilles, is that you are talking to him and he is going to respond. There is no way I can stop him.

Mr. Martel: You can do that. After you get through that process, Gilles, what we are saying to you and your colleagues is this. I wish Remo would listen because he missed what I was trying to drive at. I am not saying they should not come to you. They might not want to, as many people do not. I manage to get 60 per cent of the vote. It is a struggle, but I manage to get roughly 60 per cent of the vote.

Mr. Chairman: Only 60.

Mr. Martel: A lot of those people are not New Democrats, I can assure you, but I manage to struggle by. Some people in the riding still do not know I am the member and some of my mail still goes to Ottawa. The people, for a variety of reasons, may not approach you. You can be the finest guy in the world, my friend, but it has nothing to do with the individual member. People may choose to say, "I want to apply." Even when you are finished screening, somebody has to gather all the material, Gilles, and then they have to make sure it gets to the appropriate ministers. We all want that.

Mr. Morin: Right. That is what I did.

Mr. Martel: All right. We are saying there are all kinds of people who will not go to their members; so what we need is a central clearing house where all the applications go.

Mr. Morin: The MPP should do that.

Mr. Martel: He will not be able to, my friend. You are in government now. Wait to hell until you are not in government. In the last 12 months, I have acquired many new-found friends. I

am as busy as a bee because we happen to have an accord with you people; but when you are not in government, ask my friend Bernie Newman and he will tell you when you are not in government, there are lots of people who bypass you. They make their appointments by themselves in Toronto. City council chooses to ignore you most of the time if you are not a government member. All these little things happen. You may think it is airy-fairy and they are all going to come to you. Well, they ain't all going to come to you. In 100 years they ain't all going to come to you.

Mr. Morin: Mr. Chairman, I want to finish.

Mr. Chairman: All right, finish your sentence.

Mr. Morin: There is always a beginning. We have to educate the public. We have to do it on a continuing basis. We have to let them know the system works this way. Let me repeat what I am getting at.

All applications are sent to the MPP. A revised list is available from the MPP. You want to get information and you will obtain it immediately. However, it takes a little while before you educate people. You filter those applications, send them to the ministry concerned and make sure that they are received. How do they know if their names have been submitted? By calling their MPP or in co-operation with the minister. The minister then presents whatever name was recommended to the cabinet. That is what I am presenting.

Interjections.

Mr. Chairman: Excuse me. I am envisioning the view you have of the chair.

Mr. Warner: No comment. Maurice started out with a good idea and then abandoned it. I want to come back to it.

Mr. Bossy: I did not abandon it.

Mr. Warner: You did and you got off on a tangent, more into Remo's line of--

Mr. Martel: Jingoism.

Mr. Warner: Yes. We like the old system, but we are in charge now.

Mr. Chairman: Do not be provocative.

Mr. Warner: Okay. What Gilles is saying could in a sense work in the best of all possible worlds. It could work if you are absolutely guaranteed of the complete integrity of 125 members. It could work if you had a very aware and tuned-in public, but there are some problems.

Politics to a large extent is perception. We know what kinds of perceptions exist out there with respect to appointments. I am sure I am not alone. When I was first elected, among the first individuals who came into my office were people who were looking

for jobs in a liquor store, because one knows how to get a job in a liquor store--go and see a Tory MPP.

Mr. Treleaven: It used to be that way.

Mr. Warner: It used to be that way. That is gone, but it was assumed--

Mr. Mancini: It still is. It has not changed yet.

Mr. Martel: We have not fired enough people yet.

Mr. Warner: Although I was not a Tory, it was assumed since I was elected, I could probably get people jobs in liquor stores. I had to inform them that was not possible, nor did I intend to play that kind of game.

10:50 a.m.

In terms of public perception, if we want the system open and if we want the people to understand that it is open, we have to depoliticize it as much as possible. Maurice, maybe you do not want to do that, but I do. One way to do that is to advertise in this province that if you have an interest in serving the public you write to Mr. Speaker.

Mr. Bossy: No.

Mr. Martel: That is the word "no."

Mr. Morin: Mr. MPP.

Mr. Warner: It would be better to write to the Speaker than to the local member, because automatically in my riding if the information goes out that if you want to serve publicly on a board, agency or commission, you write to your local MPP, then right away anyone who did not vote New Democrat will figure it is pointless to write if his MPP is a New Democrat.

That is perception and that is very real out there. That is the view of the general public. You have to go back and remember the kind of opinions that have been expressed through the public opinion polls about patronage. Canadian people are fed up with patronage and they want changes. They are beginning to think the system is so corrupt that it cannot be changed. We have to do something fairly dramatic to show the public that we can reform the system. We have to have a less political approach. Maurice had earlier suggested the Speaker.

Mr. Bossy: In the first category. I always qualified that and I qualify it again.

Mr. Warner: All right. Let us suppose it is the Clerk of the House then.

Mr. Morin: I accept that. I agree with that.

Mr. Warner: We can try it on for size that for the

boards, agencies and commission the public should put applications in to the Clerk of the House, someone perceived as being neutral. I would envisage publicizing that you write to the Clerk if you want to serve on a board, agency or commission. The information is kept there and sorted out. The kind of matching we talked about before would be done, the data bank stuff. Then all of that information would be filtered out to the appropriate ministers and to the Office of the Premier. From there the process flows.

Mr. Martel: That is right, and it is still political.

Mr. Newman: I do not know whether any of you people went through the old departmental exams in grade 13. You never signed your name on the paper at all. You were simply a number and you were judged according to your qualifications. I cannot see why we cannot ask those who file applications to come along and we can assign a number to them. Then the judging of the individual will be on merit instead of on any other possible basis.

Mr. Treleaven: I cannot disagree with that.

Mr Newman: There is a simple solution, if you want to take it.

Interjections.

Mr. Chairman: Hold on for a minute here. How about letting Remo speak first.

Mr. Treleaven: Hold tough, Mr. Chairman.

Mr. Martel: Who are you going to send it to, Bernie?
That is the issue.

Mr. Newman: We can set up a committee.

Mr. Martel: That is what your colleagues are opposing.

Mr. Newman: I do not think they are opposing that. They are opposing certain things that you say, but that is having the committee make the decision.

Mr. Warner: Bernie has a good idea. I like it.

Mr. Mancini: I guess our job in this committee is to thrash around as many ideas as we can and try to come up with something we can all agree on. As one member of the committee, no matter how often I am insulted or how often Elie wants to try to intimidate me, I am going to voice my personal view. I would like to address a few of the matters we talked about yesterday and are discussing again today.

One of the problems I see is that we do not realize how far we have come. One of the things we should do to get that in a proper perspective is to review, when we have time, how appointments were made in the past. I want to get that on the record because we have not done that.

Mr. Bossy: Do you mean we should call witnesses?

Mr. Mancini: Sure, we should call witnesses.

I want to discuss, for example, the categories under 1 and 2 at the top of page 2, how all these people were chosen. As for the items not included under 1 and 2, I would not mind hearing from some former cabinet ministers, such as Mr. Sterling or the other former cabinet minister with us now.

Mr. Treleaven: Subpoena them.

Mr. Mancini: They might want to appear before the committee as witnesses. Perhaps we could call Lorne Henderson, who is now retired in Lambton county. He could inform us whether anyone ever had copies of the list of appointments and how they were made, or whether any House leaders or members of the opposition were consulted. Maybe we can do all that and start to put things in proper perspective. For my friends over there, we might investigate how they do all this in Manitoba. Maybe they can shed some light for us from there.

Mr. Martel: We should go to Russia and see how they are appointed too.

Mr. Mancini: We should consider all these things before we gallop too high on our white horses. I would be very interested to know how my good friend Mr. Treleaven, behind me, worked in that system in the past.

Mr. Treleaven: Not very well.

Mr. Mancini: That is fine. Maybe he can enlighten us. Once we establish fairly clearly and officially on the record how things were in the past, we might have a better appreciation of the direction in which we are moving right now. That is number one.

Number two, I am categorically against setting up a special office, an office of appointments or anything like that. I do not think we need to set up a separate bureaucracy to inform people about appointments. I am told the two black books are in the public library of the Legislature right now.

Mr. Morin: They are in the press gallery too.

Mr. Mancini: That is right. They are in the public library and the press gallery. I think the opposition parties have them now as well. I know the Tories always had them, but I think you guys have the two black books now too. You know exactly what is going on.

Further, I am told that after every cabinet meeting representatives from the opposition parties go into the cabinet office on a regular basis--there is a special section which people are allowed to enter--and sift through all the orders in council. Because they do that, they probably have the information more quickly than the government members, who usually get this information through press releases or any other way. Let us not

try to make light of what has already been done; let us try to acknowledge it.

You want to set up a special committee that will review--will we move to page 3?

Mr. Chairman: No. I will hold you there because today I am trying to keep people on topic.

Mr. Mancini: Then I am not finished.

Mr. Treleaven: I thought you were going to move on to a different page and a different subject.

Mr. Chairman: Today, I am going to try to hold you on topic.

Mr. Mancini: I was going to try to correlate that. If I cannot, that is fine.

Yesterday, I suggested we look at the expansion of 1 and possibly 2. It was hooted down by my colleague across the way who said it is not our job to decide who all the people who are going to be hired are. I point out to my colleague that in most cases, for example, the first clerk assistant and the Clerk of the House come from the core group of clerks. It is, therefore, very important for us to have some input in the area I suggested yesterday.

11 a.m.

We have agreed on a lot of things. As I said earlier, no matter what you say--if you want to be insulting, that is fine; if you want to be intimidating, that is fine; if you want to compare what we are doing to the old regime, that is fine too--before you do that, let us get the facts. We have made great progress and moved forward a lot.

I know what is going on in Mr. Warner's mind right now; I can tell by the smile on his face. However, that will not cause me to change my mind. We have to continue to work as a group, if possible, to try to bring about as much change as we can. We have outlined many areas where significant change has taken place.

Mr. Chairman: I am anxious to try to get on to other things, so let me try to read a bit of consensus here. I think there is one. We seem to be in agreement that we do not want a new agency created to collate this material; it should be an existing agency, whichever one. I believe we are agreed that reasonable access to the list of names of nominations from various sources is relatively important. We are not in agreement on how that will be provided.

The only way to proceed from here in drafting the report would be to ask Mr. Eichmanis to draft two or three options. The ones I have heard are that access points might be in members' offices, in ministry offices, or in some other office of the

assembly, such as the office of the Clerk or the legislative library.

We can now proceed to draft a report which says, "Here is what we agree on and here are the options of where the access points might be," and that kind of stuff. At some time, we can come back to this and discuss once again which of the options are preferable or any other options members might have come up with. Is it agreeable to draft it in that way? It may come to a point where we will have to vote on this. We have to make a decision.

That is about as much consensus as I read. The best we can do from this point is draft options and you will make up your mind about what you want.

Mr. Mancini: It is not very difficult for any member of the House to go to the library to photocopy those books.

Mr. Chairman: It is impossible, however, for a member of the general public to use the legislative library. It is not a public library. A person cannot walk up the street and go into our library.

Mr. Bossy: They can walk into the members' offices.

Mr. Chairman: Let us go off that one and move on.

Mr. Martel: Wait a minute. There are problems. God damn it, everybody does not live in southern Ontario.

Mr. Chairman: We know that.

Mr. Martel: Jesus Christ, in northern Ontario people go 300 miles to get to a member's office. Are you going to ask that? Or are we going to send out a copy of the book for everyone in our ridings as our next newsletter? What the hell kind of nonsense are we talking about? Let us get realistic at least.

Mr. Morin: What about the Ministry of Northern Development and Mines?

Mr. Martel: That has only 26 offices right across the north. Northern Ontario has four fifths of the land mass of this province.

Interjection: What are you going to do? Put one in for every inch?

Mr. Martel: We could put one in every municipal office. People would have at least a partial break.

Mr. Chairman: Let us move away from that and get to the other areas we discussed yesterday. We will come back to that in draft form. We will have a chance to review the options we can draft and any others anyone can think of. At some time we will have to make some decisions.

Mr. Mancini: I would like to have the draft report at

least a couple of days before we actually start, because we want to be prepared with any changes we might want to make on the day we come here.

Mr. Chairman: Yes. That is reasonable.

Mr. Mancini: Also, we should be prepared to vote on any or all of these items.

Mr. Chairman: The next area where I sensed there was some but not great dissension and which we need to discuss a bit more is selection. In the consensus yesterday, we simply said agencies should provide more information on what people are expected to do on a particular agency, so applicants have a clear idea. An obvious, simple technique would be to table an annual report and, as part of that, simply describe what members of this agency do. Most of them have some variation of that now.

We also suggested various ministries might take a run at describing an educational background, life experience or whatever would be useful to serve on that. The end result would be to have a kind of information book prepared which would say, "If you want to serve on a housing authority, this would be useful experience or academic background," or there might be some designation.

We are aware that francophones, for example, put together their lists of groups of agencies where they thought it was important that some action be taken in the short term to put francophones on those agencies. There are a number of other groups that might want to do the same thing, and we do that now on labour relations boards and things of that nature.

Do we want to go further, or is that good enough? This recommendation would be very specific; it would be more general in nature. The basic idea is that more information on what the agencies do and what is expected of people who serve on them is pretty important.

Mr. Mancini: We are going to ask the ministers to have job descriptions available, so Mike Breaugh can call the Solicitor General and say: "I have received three letters from people interested in doing something with police commissions, but I am not really aware of all the work they are going to have to undertake. Can you give me a job description?" The Solicitor General will send that out to you, a person from the general public or anybody else. Is that what we are talking about?

Mr. Chairman: Yes. It is not quite a job description but it is akin to that.

Mr. Mancini: Yes, so we would know.

Mr. Chairman: It would tell people what is expected if someone is appointed to a conservation authority or a police commission.

Mr. McCaffrey: I think what you propose is a good move. Something that might supplement what you are asking for exists

already at Management Board; the memoranda of understanding between the agencies and the various ministries. These things are constantly being updated. We would be crazy not to make use of them because they speak a lot to the qualifications required.

Mr. Chairman: Yes. Are there any other comments on that?

Mr. Warner: I agree that what is required in the job needs to be public knowledge, that is, the general outline of what the responsibilities are. I am not sure where it belongs, but there is the flip side of that. Certain boards, agencies and commissions have assiduously barred individuals who logically should be serving on these boards. For example, the Ontario Housing Corp. has always barred tenants from serving on its board. I do not know how we would go about it, but it seems to me the mandate of a board, agency or commission has to be publicly understood as well.

Mr. Chairman: That was Mr. McCaffrey's point.

Mr. Warner: Yes, but I am not sure how far we go. I mentioned the other day that one of the things that impressed me in Albany was how New York state had clearly identified, board by board, the types of appointments it wanted.

For example, when they talked about the ski board, they wanted to have a representative of the ski industry and a representative of the skiers on it so their interests were being maintained. That same principle holds true with respect to a housing authority, a public health board, and so on. Because it is board by board, however, I am not sure how we go about effecting those changes.

Mr. Chairman: The best we can do in drafting the report is to take a number of points here and say the ministries will have to do certain things, ethnic groups may respond in certain ways and the agencies themselves will respond. The basic premise here is that there ought to be more knowledge of what people are expected to do when they serve on an agency.

Mr. Warner: That is right.

Mr. Chairman: In general terms, what are the qualifications and background? I do not think we can say every board will be able to be as specific as something like the Ontario Labour Relations Board, where it is very clear that there is one side representing the management point of view and that is how that appointment is made and there is another person who represents labour's point of view and that is how that appointment is made. There are some that would fit very nicely into that kind of categorization, but others would not, where they are looking for a more general background.

Mr. Warner: It is a real problem for us. I do not know how we get at that.

11:10 a.m.

Mr. Chairman: I can think of no conceivable way you can say that a conservation authority, for example, should consist of these six classifications of people. It does not fit. On a housing authority, you could make an argument that tenants should be represented, but on a conservation authority, are you going to say, "We need somebody here to represent the fish, somebody else to represent the trees and somebody else to be a naturalist"?

To a degree, you could say that a backgrounder on a conservation authority would be interesting and it would be good to have naturalists or people with an interest in the ecology to serve on a conservation board. It would be equally true, however, to say you also need people who are interested in other facets of society, people who just like to walk through conservation authority land.

Mr. Bossy: Or a fund-raiser in the museum.

Mr. Warner: If you do not do anything about it, after going through this whole process we still could end up with a situation similar to the one at the Royal Ontario Museum where there are no francophones and no native people.

Mr. Chairman: Would you like to wind up with a board at the ROM which has no ordinary citizens on it? I would not.

Mr. Warner: No. I am saying, what is our safeguard to ensure that even though we open up the process and make it public, we still do not end up with what we have right now?

Mr. Martel: A review.

Mr. Chairman: When we get down to the latter part of this, we have to do what Mr. Morin was talking about yesterday. There have to be mechanisms for reviewing these things.

Mr. Warner: All right.

Mr. Chairman: That is why I do not think you want to establish hard and fast criteria that say you have to have these six items to serve on this board.

Mr. Warner: No. I do not want to get into a quota system or anything like that. I hope that every publicly appointed board somehow knows that the board is to be sensitive to a list of concerns as the appointments are made. Otherwise, we will not change anything.

Mr. Chairman: It is not difficult to put in the front of the report a preface saying: "For the first time in the history of Ontario, we are opening up the appointment process. Here is a little background on it and some of the objectives." I guess the ultimate objective would be that our agencies would be mirror perfect in reflecting the demographics of Ontario.

Mr. Warner: Mr. Morin may be right then. If there is

some kind of periodic review mechanism, perhaps that is the way you monitor the thing.

Mr. Chairman: I anticipate the next three items are going to take you a bit further. Let us try to get started on the first one to see how far we get in determining whether we have to come back this afternoon.

The first major area of disagreement occurred around the next one, which is rather critical. That is the review of appointments by the Legislature. There are some things in here which are not very controversial. The tabling of the names in some manner is already done. As Mr. Mancini pointed out, these are done by order in council. In the end, pieces of paper are processed by cabinet saying, "This person is appointed to this agency."

This is not a problem. It would be some process whereby the government House leader, most likely, would move motions, table documents, something of that nature, not far off what is now going on. It is simply a process which reminds members that here it is; it gets printed in Hansard. That is not a major alteration.

Let me run through this, then we will go back over the overlap. The next item is that appropriate standing committees would be able to call in these people for a review process. I feel the distinction here, as opposed to what we discussed yesterday, is that there is consensus that we do not want to dump all this on one committee. It would be spread out through the committee system here and you would have the opportunity to do that in areas of interest.

Mr. Treleaven: I think Mr. Sterling wanted it in one committee.

Mr. Chairman: Yes, but the consensus here is that we would not create a committee to review appointments. Am I wrong on that? I do not think so.

The next area where we do get into it is precisely how you would conduct these reviews. As Mr. Turner pointed out, the first way to go would be to say: "All of them, the widest net possible, are put out there for review. Any of the committees here could pick up an appointment in their jurisdiction and review it. We would sort it by saying that you have 30 days in which to indicate you want to conduct a review. Once you begin the review you can do that for 10 sitting days and that is it.

As we pointed out yesterday, there would be a number of other ways to do this, based on the premise that nobody is going to be reviewing agencies all day, every day. This is not going to be a common occurrence. No one is envisioning here, and we would have to put this in the report, that committees of the Legislature would drop everything else and do nothing but review appointments, so we start with the premise that not all of them will be reviewed, and that it might turn out to be a rather unusual occurrence.

If you do not want that option, the next one would be to say

here are categories, and certain categories will, as a matter of course, be put on a committee's agenda and be reviewed. Others will be reviewed in some exceptional circumstances, maybe using this kind of a process, saying in 30 days you have to give notice and then you have 10 sitting days to conduct a review, and another category would be, as a general principle, this appointment is not open to review. I suppose you could not prohibit members from using some other mechanism to do it, but reviewing the appointment would not be it. They would refer an annual report or pick up a political issue; they would have to do it in some other way.

Those are the two mainstream options here. Start out with the widest net possible and and say you can review them all. The anticipation is you would not do that. You can move to a second field which says, "Here are classifications of appointments. These are subject to a review as a matter of course. These could be reviewed in certain circumstances. These are not normally reviewed by a committee of the Legislature."

The particular classifications are not that difficult to come by, and a number of people have done that. Management Board has done it, and a number of other people who have looked at it have sorted them out. We could do the same kind of thing. Let me just leave those as the two options that were discussed yesterday and see if we have any preferences here.

Mr. Warner: I have a request. In considering the options and choices, I would find it helpful if we could have a schematic diagram, a little flow chart type of thing to indicate how you envisage this.

Mr. Chairman: Do you want me to draw pictures?

Mr. Warner: Not you, but Mr. Eichmanis has done this sort of thing before. He is very good at it.

Mr. Chairman: Yes, we will do that.

Mr. Warner: A little schematic diagram will help me in trying to sort it out. Second, related to that, are you suggesting there would be a different review process depending on the category of appointment?

Mr. Chairman: I think we would be in hot water if we put different kinds of processes at work here. The better option would be to say: "This group of appointments would normally be reviewed by a committee. This group of appointments would be reviewed if the committee indicated there was some need. This group of appointments would not normally be reviewed by a committee of the Legislature."

That is probably an easier way to do it. The process is the same. The option is we must review these, we may review these and we do not review those.

Mr. Warner: You are doing them by category.

Mr. Chairman: Yes.

Mr. Warner: There is a different process for each category.

Mr. Chairman: The only difference in the process is whether or not we review it.

Mr. McCaffrey: I understand where we are, but of the two or three that might be subject to review as a matter of course, that one category, what kinds of appointments would those be?

Mr. Chairman: For example, it would strike me we would get a fairly quick consensus that a major appointment such as the head of the Workers' Compensation Board would normally stand referred to a committee, that a review would take place and that we would always do that.

You might break it down that the chairmen of all these major agencies of the government would normally be reviewed.

Mr. Warner: You mean salaried appointments.

Mr. Chairman: The difficulty I have when we go through the book is that not all of these major appointments are salaried. Many of the major ones get a per diem, which turns into a salary if they work a lot of days.

You might say: "The chairman must be reviewed. The members may be reviewed. The appointments to a little conservation authority somewhere in eastern Ontario would not normally be reviewed as a matter of course by a committee of the Legislature." That is an easy drawing of the categories.

Mr. McCaffrey: That is helpful. Thank you.

Mr. Treleaven: If we still have not made the decision about whether the review is after the appointment or whether some portion of this process should start to take place--

11:20 a.m.

Mr. Chairman: Let me stop you there by saying that we are very specific that the first two items under item 1 are the places where a legislative committee does the interviewing and makes the recommendation. That is not the prerogative of the government. We have a consensus on that. All others are the prerogative of the government. It makes the appointment, and subsequent to the appointment being made, a review takes place.

Mr. Treleaven: You have found a consensus that the appointment gets made and then a review takes place; the review is always after the appointment.

Mr. Chairman: Yes, except for the first little group of people, table officers and whatnot.

Mr. Treleaven: First, your tabling cannot be just a

casual tabling if you have the clock and the calendar running from that point; it has to be flagged.

Mr. Chairman: That is correct.

Mr. Treleaven: Second, if it is after the appointment, there must be the power to review all appointments, whether they are done normally or not. We must have the power after the case and after the person is in, if we are going to change the system. If we are just going to keep the same system we had, then we are just beating our gums as an invalid exercise. If we are going to change this system, it has to come open, and we, as the legislators, must have the power to review all of it.

Mr. Chairman: That would not be in conflict with the little proposition I just made--

Mr. Treleaven: That is correct.

Mr. Chairman: --if you did your categories and said: "For these two major categories, you must table in the House a list of the appointments and they are open for review. Here is another category which is not tabled in the Legislature; it is gazetted or some other means of making it public is used, and those appointments are not subject to review by the Legislature. However, these two major classifications are tabled and they are open for review by a committee of the Legislature."

Mr. Treleaven: That is inconsistent with what I said. I am saying that all appointments, of any kind whatsoever, have to be flagged and tabled in the House.

Mr. Chairman: What a refreshing change of stance that is.

Mr. Treleaven: There also has to be the power to review every single appointment. I am not saying they must be reviewed. There will probably be a very small category of a dozen up here that must be reviewed.

Mr. Chairman: Those are basically the two premises on which we have to proceed; the stance that everybody is open for review and you sort it out later by saying, "We cannot be bothered to do more than 240 reviews here," or you begin by saying, "These classifications must be reviewed, these ones may be reviewed and these others are not worth bothering with." That is the basic decision the committee has to make.

Mr. Mancini: We have pretty well agreed that all the appointees' names would be tabled in one way or another in the House. There is some concern here that you may miss it if you are out of the House for five minutes; therefore, we have to find some way of flagging it.

Mr. Chairman: If I can stop you there for a second, I assume what we mean is that it is not tabled in the way of answers to written questions, but tabled in a manner that says it gets printed in Hansard, so if you are not there at the end of the day,

you or someone on your staff can read Hansard to see who was appointed to what today.

Mr. Mancini: We could reprint the ministers' press releases or whatever way we are going to do it.

Mr. Chairman: Are we in agreement that is not a problem? It seems simple mechanics.

Mr. Warner: It seems fine.

Mr. Mancini: Where we part ways here is the idea that we will make all these appointments available for review and will set up a formal mechanism whereby, on notice by someone or other, some appointee will have to appear before a committee.

Mr. Warner: What else do we do then?

Mr. Chairman: To respond to that point, I did say I thought I heard a consensus in here that a special committee would not be set up, that it was not in the cards. I have not heard anyone advocate, except Mr. Sterling who touched on it yesterday, a special committee. No one wants one, so that is out of the way.

Could I get you to respond to the third one, which is that as a matter of course designated ones would follow a process similar to this?

Mr. McCaffrey: Let us hear you on that one.

Mr. Mancini: Basically you are suggesting we copy the proposal recently made in Ottawa where they have targeted three crown agencies.

Mr. Chairman: No, not three. I do not envisage that anybody here, including you, would be happy with that kind of tokenism.

Mr. Mancini: I am saying we somehow want to reflect what they have done in Ottawa where they have targeted a number, their number being three, of crown agencies for a very thorough review of appointments and other things. I say we already do that. The standing committee on procedural affairs and agencies, boards and commissions does that on a regular basis. We call in eight, 10 or 12 a year at our discretion. We decide for ourselves without interference from the House. We have never had interference from the House. We have to give some marks to our colleagues behind us for their lack of interference on the part of their government in the past. We can mark one up there.

So far, the procedure has been the same under the new government. We, as a committee, literally can decide whom we want before us and for how long. We have a researcher do a report. We decide what we are going to talk about. If we want to talk about the chairman's salary, we ask him about his salary. If we want to

talk about where all these appointees are from, we ask him about that.

11:30 a.m.

Mr. Martel: The status quo, in simple language.

Mr. Warner: Are you suggesting that a particular classification of appointments be done by this committee?

Mr. Martel: It is a god-damned charade.

Mr. Mancini: It may be a charade for you, Mr. Martel.

Mr. Martel: That is all it is. You do not want to change a god-damned thing. It is a bloody charade. You are saying, if you want to be designated, go to the Premier's office with the application.

Mr. Warner: I understand. Try to understand what Mr. Mancini is getting at.

Mr. Martel: I understand perfectly.

Mr. Warner: The chairman mentioned earlier that we have classifications of appointments. Are you suggesting a particular classification should come before this committee?

Mr. Mancini: I am saying we have already dealt with page 2.

Mr. Martel: You can use any words.

Mr. Mancini: Mr. Martel, you can refer to the members.

Mr. Chairman: Do not respond to him. That is your problem; you just egg him on.

Mr. Treleaven: It is unparliamentary to talk to the coffee machine.

Mr. Martel: I am talking to the coffee pot rather than blowing my stack.

Mr. Mancini: You can blow your stack if you want.

Mr. Martel: You do not want to change a thing, Mr. Mancini, but you do not want to say it. That is all.

Mr. Mancini: It is your view that we do not want to change a thing.

Mr. Martel: We print a list and that is the only thing different. We publicize a list.

Mr. Mancini: I do not know how much clearer I can be.

Mr. McCaffrey: I am hearing a couple of messages, as we

all are. I am sensitive to one of them because there is some accuracy in it. We have and have had for some time a variety of options in place now to deal with things problematic, things political, things partisan in terms of appointments. Obviously, question period is one of them. Mr. Mancini has accurately pointed out that there are and have been other devices. He says he has used a couple before, such as annual reports to committees. There is no question about that.

Also, there is no question that for many terms of the Legislature we knew in advance for a good time we were going to sit on Tuesday and Thursday nights, when we were going to break and so forth. However, a hell of a lot of the time we did not know when we were going to sit. It might be Monday night, Wednesday night or Wednesday afternoon. As a committee, we tried to address a problem in the sitting times by coming out with a clear, publicly understood schedule.

It emasculated the House leaders, but that is okay. The House leaders were not being sinister when they sat at La Scala and all three of you--

Mr. Martel: It is just like your severance pay. Do not knock it.

Mr. McCaffrey: You and Tom Wells and Bob Nixon were doing the right kinds of things. You guys were making little deals vis-à-vis sitting times, how much time on this bill or that bill. You had to do it. There had to be some kind of order. Many of us did not like it because we did not know what the hell you were doing. By addressing that frustration, by saying, "This is when we sit; here are the hours," this committee has done a good thing.

I am saying we have to be precisely as public and clear with regard to appointments. It is not good enough to know there are other alternatives which have been used on occasion. We want to make it clear that it is a new ball game. It is public. You do not have to be one of the experts to know you can get the annual report of this or that committee if you want to deal with this or that appointment. The roots have been there, but it has not been good enough because it has not been public. It has not been understood by everybody, particularly the public at large and those people who will be appointees to various responsible jobs from time to time. We have to be different. We have to be public and clear in the new wave.

Mr. Mancini: My friend makes a good point. Perhaps in our report we could outline in print for the first time, for all the members and whoever else is interested in reading it, the mechanisms available at present to do the things we are talking about.

Mr. Breagh, Mr. Martel, Mr. Treleaven and I have sat on this committee for a number of years. I do not know why, but for some reason we never took an aggressive role in our committee work in the past to scrutinize the appointees, other than the few general questions we asked when the individuals were here at the time. In retrospect, maybe we should have been more aggressive.

Maybe we should have waited until we heard about the appointees.

If there had been concerns expressed by the members--the way this committee worked at the time, and I am sure the way it is going to work in the future, there was always lots of give and take--maybe we should have put forward those concerns and had the agency or crown corporation in front of us whose appointees concerned us. Maybe we should have been more aggressive at the time; but we were not. Maybe when we get all of this down in black and white, we can say to members and to anyone else who is interested, "This is a mechanism that you probably knew about but never used."

Now we have a separate committee for agencies, boards and commissions, which I do not agree with. I have changed my mind, Mr. Chairman, I do not think we should have split our committee in two. Perhaps some day we will get it back together.

Simply by outlining that we can do a lot more than what they are proposing in Ottawa as far as reviews go--I heard earlier there is some concern about some farm organizations and some new provincial appointments to these farm organizations. Perhaps in the future Mr. Treleaven will want to put that on the table for us to review. Maybe when we are finished this part of our work, Mr. Treleaven will say, "I want to review this agency because I am damned concerned about these appointments, their quality or the political aspect of it."

Everybody will know that part of our job during the review will be to thoroughly question the chairman and the members. We have the power to call witnesses. If we get aggressive enough, we may start calling anyone we feel like calling. We may call the minister and ask him about how he made these appointments.

That process, which we have not used in the past for whatever reasons, is a good process. It is up to us as a committee to take hold of what we already have and use it. We should not set up a kangaroo court where the only perceived work of a group of people is, at its leisure, whenever it feels like it, to review people who have been appointed. Let us use the authority and the tools we have. I do not think we will receive any flak. As a matter of fact, we might even get credit from some quarters.

Mr. Warner: I sometimes wonder if retrenchment is in direct correlation to the distance from the trough.

Mr. Treleaven: That is good. Can I write that down?

Mr. Chairman: That is from the Bill Davis school of elocution.

Mr. Warner: I am extremely disturbed by the messages I hear being delivered this morning. The retrenchment has started. That is very clear.

Mr. Mancini: That is silly and ridiculous.

Mr. Warner: No, it is not.

Mr. Mancini: It is very silly.

Mr. Warner: No, it is not silly.

Mr. Mancini: It absolutely is. It is the silliest thing I have heard in the last six months.

Mr. Warner: If you want to talk about silly, it has been the last few minutes of this naïveté about the previous system that was in place. What was in place? There was absolutely nothing. When was the last time that an appointee was reviewed by a committee of the Legislature or that a committee of the Legislature had the power to do anything about it? You could review an agency under the aegis of a particular ministry, but with what power? There is absolutely nothing you could do about it.

Mr. McCaffrey: We had 65 other things to do during the 12 hours in estimates or whatever.

Mr. Warner: Sure. I suppose after you have been in power for a few months, it looks really sweet that you can start appointing your friends instead of someone else's friends.

I repeat, the public is fed up with the patronage system in this country. We have a responsibility to try to clean it up. You guys are digging in; fine, that is your position. The Liberal Party wants to retrench on the previous promise it made to open up the system.

I for one am going to fight it and I am going to fight it hard. I think we have a responsibility to the public in this province to end the sleazy patronage system that has been in place. We need a system that is open, understood and accessible.

11:40 a.m.

There has to be a review mechanism. I am not talking about a kangaroo court; no one in his right mind would introduce that kind of concept into the Legislature. There has to be an appropriate review mechanism which is understood by the appointees before they are appointed. Surely to goodness, that makes sense. Any person who is going to be appointed should understand what kind of review mechanism is in place; that it is regular, and not ad hoc or at the whim of a committee.

For certain categories, there will be this kind of review; for other categories, there will be that kind of review. I do not see what is so threatening about it. I urge that the Liberal members rethink their position about retrenching and falling back on the old system before we get to the voting point.

To be quite candid--I have dealt with politics in only one way in my whole life and that is by being candid--I am very upset with what I heard this morning. Unless I have totally misunderstood you, Remo, it sounds to me as though it is the old

ball game, except that only you are in charge of the bats and balls now instead of someone else.

Mr. Chairman: I have three more speakers and then we will call break time. Before we continue, I remind you that I am working very hard to try to pull a consensus out of here. If I can, I will; if I cannot, I will count noses. For those of you who can count, take a look around the room. It will be to everyone's benefit if we can work toward a consensus rather than a confrontation. If your arithmetic is bad, take off your shoes.

Mr. Treleaven: You are being too subtle. I do not understand you on the counting.

Mr. Chairman: It is exactly the same process we used when I went through the rules. I will work as hard as I can to get something with which everyone in the room agrees. If I cannot, we will call votes. It is as simple as that.

Mr. Martel: I want to go through it very slowly and very carefully because I do not want to insult a few people.

I will start with my friend Gilles. I do not want to be a clearing house. I know how the province has been divided in the past. Certain Tories had eastern Ontario and Mr. Bennett was one of them. He was the big Pooh-Bah for that part of that world. That is the way they divided the province.

If you think an important part of your role is going to be appointment-making, Gilles, I am going to sell you a bridge five years from now. You will find out as I did. When people ask me, I submit their names only if I think they have some competence; beyond that, I never look at their political stripe.

I have never known how the system works; I was never very concerned about it. In my opinion, the only people who were appointed in Tory land were Tories. It was as simple as that. I am not going to try to rehash the past. That was the simple reality. I suspect that most of the Tory back-benchers did not have a hell of a lot to say about it, except the designated few who were the kingpins for an area.

We have been trying to say to you that if we are talking about the motion that was presented by the government House leader, there has to be a new system. I listened carefully this morning and yesterday afternoon. Remo has taken the lead and he is saying we cannot take this out of the Office of the Premier (Mr. Peterson).

Never mind the appointments for the moment. The applications have to go back to the Office of the Premier. They will end up there anyway by what we are suggesting. We are suggesting a process whereby people may submit their applications to this place. They will be put on a computer and then forwarded to the Office of the Premier or to the appropriate minister. All they will have to do is plug in.

In the final analysis, they will make the appointments.

Nothing changes except that it is an open process. Anyone can apply. An applicant can go through Morin, Martel or Breaugh, or he can choose to ignore us if he knows where to send his application. At that point, the names are put on file by categories and submitted to the appropriate ministers or to the Office of the Premier for their consideration.

My friend Bossy says no, let them send the application to 26 different ministers. Members of the public do not know who the hell those people are, and they will never know. To suggest they can travel 150 miles to my office in Sudbury East to see the black book is a crock; or they can fly 600 miles to my friend Pouliot's riding to see the god-damned black book.

Mr. Warner: They have to fly there.

Mr. Martel: That is not bad. For a job that does not pay, they are going to fly 600 miles to see the god-damned black book. Who are you trying to kid? We need a simple process whereby it is forwarded to a clearinghouse which puts it in the appropriate ministry. The name is there. The minister and his staff are still going to decide.

Remo tells me we have made all these changes. We have made one change. We have made the black book available to the rest of the world.

Mr. Warner: That is it.

Mr. Martel: Do not tell me about the other processes. Newman and I have been here 26 years and 19 years respectively; maybe more for Bernie. You could not tell me of two times when we have looked at appointments, because until a couple of months ago we did not even know who the appointees were. Do not tell me about raising it in question period; do not tell me about examining it in the procedural affairs committee, which does not have the authority to talk about appointments.

I have read your reports now. You have looked at how they function and made recommendations on where they should change, but you have not looked at the appointments once. Most members do not give a damn, except that there is a perception that the public wants a system that is honest and aboveboard. We are trying to recommend it.

I would take it one step further, something Treleaven drove home to me yesterday. Under the system Breaugh suggested, it comes to the committee. I do not care if I interview most people. Quite frankly, I think most people would not even submit their names if they thought they were going to be called to Toronto and embarrassed. You might make a short list on the very important ones.

When the lists of appointments come, the committee should do one thing or the other: ratify them or not ratify them. If it says yes, you will send back and say it is a good committee. If a specific committee does not give approval, the government would be smart if it did not proceed because it would know there was not unanimous consent.

You might try not to be negative and say, "We can change it," but if you do not get the formal approval of the committee as a whole, then somewhere down the road you might pay the price for not getting it. You would go back and review it. That is all simple, aboveboard and still within government control. The only thing is you might stand by it at your own peril somewhere down the road.

You do not want any of that. As I listen carefully, Remo wants the status quo totally. He talks about a new system and a new dawn. Bullshit. There is a black book available that I now have, and that is the only thing he wants to change. The rest is a crock. He can bundle it up, he can put on as many wrappers and big ribbons as he wants, but he does not want to change a bloody thing.

Even his House leader, who has not even looked at it, has given us something to look at and said, "Find a better system." Your better system is the status quo. Put it in your ear, because if it comes to a vote, it will come to a vote. As Breagh says, there is the number. I prefer that you guys be honest. Tell us what you are really concerned about. Morin's concern is genuine. I believe him. He wants to be the guy who does it. I do not. Some day he will realize he does not want to be either.

Mr. Chairman: I am not sure "Put it in your ear" is parliamentary, but I will let it go.

Mr. Martel: I do not want to shadow-box for five days.

Mr. Bossy: Some of your statements do not hold water. I have to come back to review.

Mr. Martel: I do not want to review.

11:50 a.m.

Mr. Bossy: When you draw these people into this room after they have been nominated, Elie, I want you come up with the criteria of how you would trigger that a person be asked to come in and sit here and divulge his life. "This is your life, sir."

Mr. Martel: That is what I said. I did not want most of them to come. Let us say this committee did not agree. Rather than question someone, you would just--

Mr. Mancini: Point 7 says "everybody." Read what is in front of you.

Mr. Martel: I do not care what it says. I am telling you to listen to what I said. I do not give a shit what is written there.

Mr. Chairman: All right. You had a chance to put your point, Elie. Now we are going to listen to what Maurice has to say.

Mr. Martel: I am trying to tell Maurice that he and I are on the same wavelength. We do not want a review.

Mr. Chairman: Fine. We do not need you to tell us that seven times.

Mr. Bossy: Then we agree.

Mr. Martel: My review would be a simple one--

Mr. Bossy: We agree on that. Let us forget about the rest.

Mr. Chairman: I do not see people working for a consensus here today, folks. Get serious.

Mr. Bossy: I am serious about that.

Mr. Chairman: I do not see people working for a consensus in here.

Mr. Treleaven: There is not one.

Mr. Chairman: Then there will be a vote.

Mr. Treleaven: There is not a consensus. We are very obviously polarized. I have a couple of very brief points. One, our party wants an open system. As shocking and as changeable as that may sound, we want an open system.

I became chairman of this committee about three years ago. At that point, I remember saying in my naïveté, "How many agencies are there for us to choose from?" John will remember this. He and Smirle went scrambling down to the Premier's office and the message was that the Premier's office did not know how many agencies, boards and commissions there were and did not know the criteria.

It took months for them to scramble up from somewhere a list of the approximately 270 ABCs they believed the province had appointees on. It was a pretty funny list. It was so fragmented at that point that even the Premier's office did not have a list.

Mr. Martel: Eddie Goodman had it.

Mr. Treleaven: That underlines the reason why there should be a central office of all these agencies and appointees in a computer, simply for collation and storage and to be there for the public. To me that is fundamental. Either we have it open and everything flows from that, or it is not going to be open. That is where we are polarized in this committee.

Mr. Morin: There are two things my colleague Elie said.

Mr. Chairman: We are in trouble already.

Mr. Morin: The first point is the availability of the book. I have lived in the north, I know what you are talking about and I agree 100 per cent. I have no objection to making the book available to the municipalities under the Ministry of Northern Development and Mines.

My concern is whether the municipalities will be able to amend the book regularly and make sure that the people interested have the right information, possibly under the guidance of the MPPs. If they are stuck, if they feel they do not have the right information, they should call their MPP. That is his job. I have no objection to making sure that everybody knows about it.

Mr. Chairman: Can I get danger pay?

Mr. Morin: The second point is the procedure for making an application? I propose through your MPP. I have no objection if somebody writes to the minister and I have no objection whatsoever if he writes directly to the Premier, as long as I am informed. That somebody may be an excellent applicant, but I want to know. I have no objection to that. I propose a format where the MPP would have total control, but I am flexible on that.

Mr. Warner: Gaining (inaudible).

Mr. Morin: No, it is not a question of gaining; it is a question of common sense. If they write to the minister, I have no objection. If they write to the Premier, I have no objection. But why make the system complicated? Why create a bureaucracy? Your sole responsibility is to deal with all the applications. There is already a system in place and it is up to us to improve it. That is all I have to say.

Mr. Chairman: Bless you.

Having had the benefit of your wise and calm deliberations this morning, we can safely say that the two options will be drafted. We will entertain further discussion about them--we may attempt to refine the second option of classifying a bit--and present them to you. I will give you one more go at it to see if we can come out with a consensus. If not, this may be an item on which a vote is required. I suggest we break now and come back this afternoon to go through the remainder.

Mr. Warner: From the discussion we have had this morning, if there is any hope of a consensus, any hope of more progressive thinking, it is around the two areas of how the process starts and the application for--

Mr. Chairman: We did gather consensus on a number of matters this morning that I sense we can proceed with. The sticking point is the review of appointments. We do not seem very interested in looking for consensus in the area of review. If that is the case, there is nothing I can do about that. All I can do is ask John to draft a report which lays out the options. Members will discuss them again, then vote on them. Whichever vote carries, that is what goes in the report. There is nothing else I can do. We will stand adjourned until two o'clock.

The committee adjourned at 11:57 a.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES, BOARDS
AND COMMISSIONS

APPOINTMENTS IN PUBLIC SECTOR

THURSDAY, MARCH 6, 1986

Afternoon Sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES, BOARDS
AND COMMISSIONS

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)
VICE-CHAIRMAN: Mancini, R. (Essex South L)
Bossy, M. L. (Chatham-Kent L)
Martel, E. W. (Sudbury East NDP)
McCaffrey, R. B. (Armourdale PC)
Morin, G. E. (Carleton East L)
Newman, B. (Windsor-Walkerville L)
Sterling, N. W. (Carleton-Grenville PC)
Treleaven, R. L., (Oxford PC)
Turner, J. M. (Peterborough PC)
Warner, D. W. (Scarborough-Ellesmere NDP)

Clerk: Forsyth, S.
Assistant Clerk: Mellor, L.

Staff:
Eichmanis, J., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS
AND AGENCIES, BOARDS AND COMMISSIONS

Thursday, March 6, 1986

The committee resumed at 2:08 p.m. in room 228.

APPOINTMENTS IN PUBLIC SECTOR

Mr. Chairman: I believe we are ready to go again. We will take another run at the last two items on the outline here to see whether we can get a little more direction on them.

Mr. Treleaven: Boy, you are a chicken. If you have any kind of little problem, you just duck around it.

Mr. Martel: Mr. Mancini is not here, so let us get this settled now.

Mr. Warner: Mr. Mancini is out checking the trough.

Mr. Chairman: I take it there was a reasonable suggestion by members yesterday that we need to devise some language and techniques whereby--

Mr. Martel: I tried that this morning.

Mr. Chairman: --if a committee, in conducting its reviews, decides to submit an adverse report, we would know what the anticipated response would be and how the process would work. In other words, we need to address ourselves to this concept in some way.

There is not a great deal of difficulty when, in certain sections where we are talking about officers of the House, a report comes from a committee of the Legislature, it proceeds to the Legislature and a vote is taken. That is fairly straightforward.

The reverse process is not as straightforward. Yesterday we were suggesting generally that if a report of a nomination or an appointment were to be presented to the House and referred to a committee, we would anticipate that the committee would subsequently confirm that in a sense to say, "Yes, we approve."

If the committee did not, it would have a couple of options. One would be simply not to deal with the matter, in which case it would stand confirmed. It could choose to submit a recommendation, something along the lines, "We choose not to recommend this appointment," or, "We choose not to put our stamp of approval on it," however the committee might want to word that. In essence, if it was stymied in a committee review of an appointment, the anticipation would be that the appointment would be withdrawn. A number of techniques could be used to do that.

Mr. Treleaven: Several things bother me. I do not think it is practical, except under very unusual, unique circumstances, to expect the government to withdraw that appointment after it has made the appointment, has tabled it in the House and has trumpeted to the whole world that this person is now appointed.

I do want to keep the idea going that it is an automatic flow-through unless the committee stops it. Therefore, I wonder whether there is a more subtle way the committee can stop the process without putting it in a blatant, negative report that this guy is a bad X, a bad Y or a bad Z.

I do not think a committee will do that. I do not think it will go to that extreme. As a result, we will get a bunch of bad appointments through. For example, I wish there was a more subtle way of requesting an extension of the 30 days or whatever, leaving it open.

Mr. Chairman: You may recall that the technique they were using in New York state and in Washington was simply not to deal with the appointment. In other words, the governor in New York had a time period in which to get his confirmations done. If committees did not like the proposals, they would simply not deal with them.

Mr. Treleaven: However, the problem there was they needed a positive step, a positive, "We hereby recommend...."

Mr. Chairman: Yes.

Mr. Treleaven: We want one where the system flows without any step, and the great majority will flow on through without any step being taken.

I am thinking of some procedure or routine whereby there is an extension, a signal. Maybe it is no more than a signal of, "Hey, government, you made the appointment, but you had better find a reason to unappoint him or to not reappoint him or something because there is something the committee is not very happy about." Without having to make accusations and getting into all the public hassles, is there something we can work out to get the subtle message across?

Mr. Chairman: Yes. The proposal here would give you a couple of avenues to do that which you might want to consider. One is that the order in council appointing someone to an agency would be dated 60 days, a couple of months, ahead of time. That would allow the government simply to withdraw the order in council. If it was not able to get it through the committee in the 30-day or 40-day period we are talking about here, the government could simply withdraw it. It would not be a very dramatic thing, but it would be an effective tool.

Mr. Martel: I would like to see us try that procedure. We are not going to get appointments dribbling in one at a time. That would happen very infrequently. Invariably, when there are that many committees, a raft of appointments is going to be made all at once.

The signal should be that we say numbers one to 100, by number, are the ones that confirmation and leave out the other numbers. If the numbers are not there, that means there was not unanimity in the committee. Then the government is on its own. That says there is no unanimity. At the same time, it does not bring anyone forward to be cross-examined. Outside a small group of high-priced appointments, I do not want to start interviewing or be part of any review process with respect to Mrs. Jones who was appointed to the hospital board back home.

On the other hand, when it is something such as what happened with Cambrian College, where the city council's appointee was totally ignored and the Council of Regents took one of its peers, another councillor from Toronto, or that sort of thing, there has to be a bona fide reason.

You simply have a list of how appointees can be made, but questioning the rest of them at random is for the birds. I think the subtle way to do it is to say, "There is unanimity on the following ones." If the others are not even mentioned, the government is fully aware it is making those appointments at its own peril. It stands the risk of being scrutinized or criticized for it. That way, the government knows it is doing these things but could face the wrath of God somewhere the road.

Mr. Chairman: What you are suggesting is a little different from what we talked about previously. For example, the orders in council might be the documents tabled. It would not necessarily have to be orders in council; it could be a notice or something like that, saying, "These are the appointments that will take place two months hence." If the committee did not pick them up in the 30-day period, they would stand approved. Then the government would be faced with the decision, "Do we want to proceed with this appointment or simply withdraw it?"

If it wants to proceed, we would have a review process whereby that person could go to the committee for the review. If the government decided, "This is really too much aggravation and not worth the bother; we do not have a good case," or, "Hold it; we have a problem here," it could simply withdraw that. Is that the kind of mechanism?

Mr. Martel: Yes. These are the ones on which we give the list of approvals without any concern. Then there are the ones the government would then worry. Let us say this committee was doing it. We have not reached that point, but this group might say, "Of the 200 appointed this week, to take effect two months from now, there is unanimity on 197 of them." The committee lists the 197. It does not even make reference or attempt to point out why two, five and seven did not get unanimous consent.

That flags the government that it has an option to proceed if it wants, withdraw, change or alter it without bringing a bunch of witnesses forward and trying to harangue someone to death over something he or she did 23 years ago. It is a nice, subtle way of doing it.

Mr. Chairman: I think these are all workable techniques. I would like to get some flavour of whether you think they are reasonable.

Mr. Bossy: I say it is a ridiculous way.

Mr. Martel: Why?

Mr. Chairman: Excuse me, Mr. Bossy, just a second. Mr. Warner.

2:20 p.m.

Mr. Warner: I think we want to establish something that is subtle, a civilized approach to this, which will cause the least embarrassment to everyone involved. Maybe the way to approach it is that, as you mentioned, suppose the government has come up with 100 or 150 appointments, whatever it is, and those have been tabled. The committee then has whatever period we want to establish--two weeks, three weeks, a month, whatever--within which to respond. The committee could then respond only to the ones about which it is concerned, meaning all the others are automatically confirmed.

We may have two names about which we are concerned. The committee simply indicates to the Premier's office its concern about these two names, schedules a review, allows a little breather space for the Premier's office to find out the concerns and then by mutual agreement it may simply withdraw the name or substitute another name. The review may not even be necessary. The Premier's office may simply go back and start at square one for those two names.

Mr. Chairman: Could I get this clarification from you? I am assuming, since everyone is saying "the committee says," it is in fact a committee decision. It is certainly not the right of an individual member to challenge these.

Mr. Warner: Right.

Mr. Chairman: For example, if there were 20 appointments announced today, it would be your responsibility to take them to Hansard, where the record of that is, and go off to the appropriate committee and say, "I believe we should review this appointment." You must get the agreement of the committee before the review takes place, or are you saying that the committee automatically reviews it?

I would be a little reluctant to say that an individual member could cause that to happen. However, I think there is some reason in that if I had to convince the majority of members on a committee that this was worth doing. For example, it is much like with the annual reports. Twenty members get it out to a committee, but you still have to go to the committee and convince that committee that this is a useful exercise and explain why you want to do it. In other words, you have to justify why you would deal with that report and why it would take precedence over some other item.

Mr. Martel: Doing that would get rid of the frivolity.

Mr. Treleaven: I see a timing problem in that we do not sit all the time. I see us and other committees running up against 30 days, against time limits, when we are not sitting, etc.

Mr. Chairman: When the House is in session, it would not be a problem.

Mr. Treleaven: That is right.

Mr. Chairman: Between sessions it could conceivably be a problem.

Mr. Treleaven: It could be a distinct problem.

Mr. Chairman: Then between sessions we would have to find a mechanism for them to table the appointments anyway. There is a problem either way.

Mr. Bossy: You mentioned that you send it to the appropriate committee.

Mr. Chairman: Yes.

Mr. Bossy: Can you expand on that?

Mr. Chairman: We have talked about how there will be--

Mr. Bossy: We are talking about 150--

Mr. Chairman: --a committee on agencies, but we are not talking about a super committee to review appointments. No one has suggested that. We are saying appointments would be reviewed by the appropriate committee.

In the justice ministries it would be the standing committee on administration of justice that would review those appointments. The safeguard here is that we do not want to clog up a committee or all the committees reviewing appointments, but on occasion if a review was made in the justice field, it would seem appropriate to most of us that the review, if it is to take place at all, would take place by that justice committee.

Mr. Bossy: You are saying that every committee would be charged with some of those 150 appointments. You used that figure.

Mr. Chairman: Yes. There would probably be 20 appointments in the justice field and so the justice committee would review those.

Mr. Bossy: Then it comes back to the subtlety they are talking about. We are talking about being open to the public. Those that do not get reported back or talked about, when we have a public meeting here, how are you going to knock three of them out and not talk about them? Where do you arrive at a decision to knock those two or three out without publicly discussing them?

Mr. Chairman: At the committee.

Mr. Bossy: In camera?

Mr. Chairman: In sensitive matters the committee would go in camera as we do now when we are ordering business. We very often do that. That is not an unusual thing.

Mr. Bossy: It contradicts, though, what we have on our paper. It contradicts the fact that all hearings will be public.

Mr. Chairman: Ordering the business of the committee is rarely done in public. For the most part, most committees around here will sit down without Hansard and kick around what is priority, what should get done, when do we do this and whom we call. In many instances, there would not be a problem doing that during a regular committee session with Hansard running. On some rare occasions, when it is a personal matter you want to discuss, you may ask to go in camera. We have tabled a major report on that. It is not really a great problem.

Mr. Bossy: It is a real bottleneck, though.

Mr. Chairman: It is conceivable, but it is not likely.

Mr. Treleaven: I have an idea we are being a little premature discussing the mechanics here, with respect to Elie, until we establish whether our four Liberal friends in the middle here accept the principle.

Mr. Morin: Four friends, no qualifications.

Mr. Treleaven: In this case, yes, they are friends. However, I want to know whether the Liberal friends accept the principle that there will be a review by some committee after the government appointment is made.

Mr. Chairman: To put the point as gently as I can, I am asking Mr. Eichmanis to draft a report. The draft has to contain a lot of "what ifs," because we do not want to be writing this as we go along. The concept is that we will draft a report and the committee will then make its decisions. We will exercise certain options and that means we will have to consider in the drafting of the report as many options as we can. It is important for Mr. Eichmanis, for example, to be able to take some time over the next couple of weeks and draft the "what ifs" about this. How would we handle it if there is a committee review?

If the committee decides that it does not want to review any of these, and it may, there will be no need for a mechanism of this type. However, on the off chance that we decide to proceed with the review in some form, we had better make sure we have done our homework and that we have covered this part.

Mr. Martel: May I make one suggestion? When Mr. Eichmanis is drafting these options, can one of the options be that one committee will look at it all?

Mr. Chairman: We have not considered that very much, but sure.

Mr. Martel: The reason is that I worry, as Mr. Bossy does, that every committee may handle it differently. We used to have a similar problem with guys coming into committee late. We used to call them the cowboys.

Mr. Chairman: Do you mean a person who would come in to the committee with a cigar in his hand and who would put his feet on the desk, that type of person?

Mr. Martel: At least I know what is going on. I am talking about the cowboy who came in and started all over again on a topic we had finished and which had been cleared off the table three days before.

The committee that looks at it will have to have some sophistication to make sure that it does not destroy anyone publicly. The committee will have to adopt a procedure on how to handle appointments in a sensitive manner.

Someone on that side talked about getting unanimous consent. When somebody raises an appointment, he cannot raise it because Joe Jones is a Liberal, an NDP or a Conservative. If somebody says, "No, this is not a good appointment," he has to have a good reason. Otherwise, the rest of the committee will simply say: "To hell with him, we are not even going to consider that matter. It is not worth while considering it." You are going to have a bloody good reason to even have it reviewed.

If you let it go to a different committee, you will find that type of sophistication and sensitivity will not develop because people are not dealing with it all the time. I think you should pass it through the same committee that is now in the process of writing this report, the standing committee on procedural affairs and agencies, boards and commissions. If it is going to look at agencies, boards and commission, it should include the appointments as an addendum and not just how they function.

From my reading of the report you have done so far, all you have done is to determine how these committees function, whether they are appropriate or whether they should be changed. No one has ever looked at appointments.

Mr. Chairman: To correct the record, we have spent a lot of time over the years asking people about appointments. The problem is that we cannot pursue that very far because they do not know how they were appointed. They have never known and there has never been a process. They could not tell us anything because they did not know.

Mr. Martel: I have gone only by the reports I have read and I have not detected that. I do not read Hansard. I have read your reports on the various committees that you have reported on during this past year.

Mr. Chairman: That is the reason it could never be pursued.

Mr. Martel: You should put an addendum to say it comes back to this committee.

Mr. Chairman: Are there other members who think it is reasonable to include in the draft the concept that one committee would review appointments?

Mr. Treleaven: That should be in there as an alternative.

Mr. Warner: As an option. Elie raises some points that have to be considered.

2:30 p.m.

Mr. Bossy: We could pretend that we are the committee and that we have just received a list of 150 appointments on which to make a decision. We each have a copy.

Mr. Chairman: This is precisely the exercise this committee has gone through every year when we review agencies. We look at a list of some 597 agencies. We select a dozen or so for review purposes. We give them notice and we invite them in. We call witnesses. We do a background research report into the agency itself. It would not be an unfamiliar process to this committee to take a huge list and pick out a dozen or so and review them.

Mr. Treleaven: I see it as more than that. You are doing spot checks. I see this system as a little more serious than that.

Mr. Chairman: Yes, it would be different, but the process would be the same.

Mr. Treleaven: I see that John has an assistant whose job it would be, or somebody's job, to sit down and go through the 150 names and the one-sheet applications to see if anything jumps off the page at him. I would think somebody should do some screening of some kind.

Mr. Bossy: That has already been done before the appointment is made.

Mr. Treleaven: Really.

Mr. Bossy: Oh, yes. My God, the Solicitor General (Mr. Keyes)--

Mr. Treleaven: The Solicitor General? Sure.

Mr. Warner: I want to come back to what Maurice raised because it is a point that needs to be considered.

We are trying to work out a system that runs smoothly and we have some basic principles that most of us want to include. If we say this is going to be an open system and it is going to be

publicly accessible, then it becomes a little awkward in front of a list of 100, faced with any committee, whether this committee or any other, to decide on what basis you determine you want to ferret out two names. How do you discuss this amongst yourselves--you have Hansard and it becomes public knowledge then--without possibly causing problems for someone where you should not be doing that?

Mr. Chairman: It is awkward, yes, but not a major problem.

I remind you that you have an ability to go in camera if there is something of a personal nature you want to discuss. In our committee report we recommended that this should be done rarely. We need some justification to do that. We did recognize there are occasions when every committee under the sun that deals with human beings sees a need to do so privately.

That does not mean that as a matter of course we operate in camera. It should not mean that at all. That should be the exception that is there, that is exercised with some discretion and with good reason.

Mr. Martel: That is where you are going to eliminate the silly crap that could develop, everyone saying, "I want to get rid of that committee." They are going to have to have a pretty good reason to bring it forward.

One does not have credibility for very long if five out of five times he strikes out because of some personal thing. He does not like the colour of the guy's eyes or the woman's hair. You are going to find frivolity is going to get out of it in a hurry because none of us is going to sit around as some guy plays some silly little game trying to spear somebody, unless he has a pretty good reason.

Mr. Chairman: The reason I raised the point about making a committee decision is that it would be my concern that no single member should be able to do that kind of thing.

If you have a case where you think something should be reviewed, in our traditions here nobody does that on his own. You are always forced to go to a committee and convince a group of other people that what you are proposing is a reasonable way to proceed. An individual member who wanted to take out some vendetta on somebody really could not do very much. He would have to convince a dozen other people on that committee, or the majority of them, that that is a really reasonable thing to do.

In our system there are a number of safeguards the American system does not have. I think we should recognize that.

Mr. Bossy: Further to this, we have these thousands of people that have been appointed. We could take that list and go through that list. How many of these people the former government appointed would we right now find not credible in the positions?

Do you want to be the judge and jury right now?

Mr. Martel: No.

Mr. Bossy: If you do not want to be, in other words, you are saying: "They are all qualified and they stay there. We should not appoint anyone to those positions because there are qualified people in them." You leave the status quo, you leave the people who are currently there and there is no way you replace them unless--

Mr. Martel: The time frame is wrong.

Mr. Bossy: You are going to be asked why you want to appoint another person to that position.

Mr. Warner: You misunderstand. There is a term of office for these positions.

Mr. Bossy: You have to have reasons for removing them from office even at the end of the term.

Mr. Treleaven: To go back one step, let us take district health councils and nursing home review boards for examples. There are people who do not find it logical or right that some district health councils are made up of a majority of doctors and hospital representatives, called providers, who obviously have vested interests. There are some people who question this practice. The same people might look askance at a nursing home review board or complaints board that had a number of nursing home owners on it.

Therefore, I am asking, is it the consensus of the committee that when appointments come through to the councils and boards that there be an impartial person as a committee employee to look through the list of appointments to see if something jumps off the page at him, or would it be left to the opposition caucuses? What is the consensus?

Mr. Chairman: There are a number of ways to do this, but the consensus we had this morning was to interpret what would be the selection criteria, as we called it. There was fairly quick consensus on the part of developing what the agency does, who should be on it and what qualifications are needed. That was relatively easy to do in the abstract. It would be more difficult on an individual appointment basis. That is where it might get a bit sticky.

We would have to run it through a process that said the question of whether nursing home operators should be on a nursing home review board is addressed in several ways. The first and probably best way is the selection of criteria for people. That way you would have the academic argument without getting into personalities. The rougher side of it would be to do it on the basis of an individual appointment. That would be a little more difficult.

Mr. Treleaven: If it was a health council where you found the fourth hospital administrator now being appointed to a district health council--

Mr. Chairman: That is where I think it would be more profitable, more sensible to do it by deciding initially. For example, should judges be on a police commission? You could have an academic argument about whether there is conflict of interest, whether you need their expertise, all of that. It would be easier to make your decision there as opposed to whether this judge, who is a very honourable person, has spent many fine years on the bench and would be an obvious asset to any agency in the world, should be appointed to this police commission.

Mr. Treleaven: If a second relative of a policeman on a police force was being appointed to a police commission, who is going to see that jump off the page and say--

Mr. Chairman: That is where the access to information would assist you.

2:40 p.m.

Mr. Martel: Let me back up one step to try to indicate how it could happen. If eventually we can get consensus that all the applications go to one place and are forwarded to the minister and the member whose riding they came from, members will have some knowledge of the individuals and the 125 members in the House then would have an early handle on who is being appointed from their ridings or the next riding. The members and the minister will be fully cognizant of all the appointments. There are 125 members and they cover all the ridings.

If the names all went to an appointment office and the various lists were then sent back to the member and the appropriate minister, when those members saw them, they would have an opportunity to pick up the phone to call Mr. Morin, or Mr. Morin could call to say: "Minister, there are 12 people. Two of them are the town drunks. You have have to withdraw them."

When it comes time for the review process, as you look down the list, every member and minister will have had input somewhere along the line on all the appointments. The odd one will "jump out at you," as my friend says, because you will have cross-referenced it at the beginning.

If it is sent to a clearing house which does not make any recommendations and it is sent to all those applicants province-wide who want to be on the Attorney General's list of appointees and the Attorney General and each member from whose riding an application comes gets a copy, you and I then have an opportunity for input, as does Mr. Bossy; it is a crossway. The chance of appointing the town idiot or the town drunk goes out the window.

Mr. Bossy: It is a big office.

Mr. Martel: It is not a big office. That office does not do it, Maurice.

Mr. Bossy: It has to sort it.

Mr. Martel: That is right. It has to sort it. That is all it has to do. If it cannot handle 6,000 or 10,000 applications in the whole year, it should not be there. It is just starting to put them on computers.

Mr. Warner: I am totally perplexed with Maurice's problem in straightening out what a computer system is.

Mr. Bossy: I had a computer system.

Mr. Martel: You do not understand how it works.

Mr. Warner: It is always tough moving from the pork barrel. I want to come back to Richard's point.

Mr. Mancini: We could not get a researcher until the government changed.

Mr. Chairman: Lighten up.

Mr. Martel: If it had not been for me, you still would not have a researcher.

Mr. Chairman: I am patient.

Mr. Warner: We are looking at some basic fundamentals, which have not been there before and which most of us hope to build into this system. I think it handles the concerns which Dick raises. If, through your data bank, you know the sensitivities you are trying to address, then as particular appointments come up, you know the kind of balance you are looking for. If the system is open and understood by the public, that in and of itself will be a barrier to some people, the very folks you do not want to serve, because they know it is an open system and they know there is a possibility of scrutiny.

If, as Elie mentioned, the people who are applying have their names sent back to the local members and the ministers, then the applicants know their names will go back to other politicians who will take a look at them. If they have something in their past they wish to hide, they know that will surface. That will be a barrier to undesirable folks applying.

The case of the specific appointments, which Dick raised, is a legitimate concern. If the system were to work the way I envisage it would work, it would be much the same way as we saw in a couple of jurisdictions. From their data bank, they knew precisely the kind of makeup of a particular board they wanted. They could also do the global thing, not just look at one board in isolation.

If, for example, out of 2,400 appointments, we know we want to get an overall balance of men and women; we want to have the demographics of the province represented; we want to make sure there are disabled people who are servicing on boards and so on, then through the data bank system, you have protection for yourself. You know you are going to make good appointments.

If you have done all that, then by the time those names are tabled I would be really surprised if there would be any names a committee would want to review. I think you will have cleared out the ones you do not want.

After all, if you stop and think about it for a minute, if 12 people from your riding have applied for a variety of boards and those names come back to you, you are going to check them out. If one of them you know is the kind of person who should not be serving on any public board, then you are going to let somebody down here know about it. The chances are that name will not get any further, it will not get forwarded, it will not be the final choice by the Premier's office or by the minister's office. By the time the list makes its way to the House where it is tabled, you will have sorted out 99 per cent of the problems.

The key to it is that the public has to feel confident that it is an open system and that everybody in the province has an equal opportunity to apply. We are depoliticizing the system. No more are we simply promoting our friends, the people who voted for us.

That is what I want to do. I am not convinced that everybody on the committee wants to do that, but I think that is what we need to be doing. That is a goal.

I think there has to be a review system. That has to be understood too. There has to be a publicly understood system. My guess is that the times it will be used will be rare and in extreme circumstance, because of the flow of information.

Mr. Chairman: Are there any other comments on this? Perhaps we could take one last kick at the last item, where we go through committee procedures.

There are a couple of areas I think you should turn your mind to. First, a suggestion has been made that the committees would get all the background material on appointees from the government. If we have a central source responsible for collecting information--names, background, experience, whatever--what we have agreed on is that here is the agreed-upon material.

In other words, it would be somewhat vetted at that source. Hearsay would be off it, gossip would be off it, unsubstantiated comments or information would be off it. There would be an agreed-upon list of information on a particular individual. Since you already have that from that central source you would not require that from the government. Is that reasonable?

I have some concerns I would like you to talk about for a little bit. It is the extent to which you would want committees to conduct background checks. I simply remind you that committees are not well suited or geared up to doing background checks. There are some types of background checks which really only an agency set up to do that kind of thing has the wherewithal to do it.

An obvious thing is a security check. I do not think it is practical to suggest that a committee of this Legislature could do very much in the way of security checks on people. Only a Royal Canadian Mounted Police agency, or something of that kind, is in a position to do that.

I suppose the verification of somebody's claim he had a degree in a particular thing would not be difficult to do. I suppose somebody's declaration that he had 20 years of experience in that field would not be that difficult to do. What I am trying to caution you about is that our committees do not have staff to do this kind of work. Since it is so specialized it would be difficult for us to do.

Those are the reservations that are there.

Mr. McCaffrey: I share them all and I would like it deleted.

2:50 p.m.

Mr. Chairman: Are we in agreement on that? My view is that we are interested in whether someone is qualified and the right person to do the job. It is not particularly our field of endeavour to do investigative work into somebody's background.

For example, the one thing that jumps out is criminal records and things like that. I do not know of anybody around here who would be dumb enough to suggest a mass murderer sit on a nursing home board. There may be an occasion when we are trying to establish an agency which reviews halfway houses for criminals when we may want someone who has a criminal record, has been rehabilitated and now works in that field.

In general, we want to assert that the hearings would not be private hearings, but public. The committee would have the normal powers of calling witnesses, getting some research done and doing some work in that regard and would report. Those general principles would apply.

Mr. Turner: I have given some thought to it, driving back and forth. What you are saying is quite true and I agree with you for this time and for these people, but what is going to happen five years from now? There will be different people and different circumstances.

Mr. Martel: You will not be back in power yet.

Mr. Turner: With all respect, obviously things are going to become more permissive as time goes by. I am not suggesting any solution. I am raising a caution in everybody's minds that what we are doing today is going to have a profound effect down the road.

Mr. Chairman: I agree. I tend to think that what would be sensible for us to do and what makes the exercise worth while is to lay the ground rules under which the process begins. The best we can do is to say we anticipate that committees will drop everything and do this. We do not anticipate an American-style

affirmation process. We are not suggesting this be a major part of the legislative committee process here. We are providing for the review of some appointments in some ways--for some, the table officers and what not, in a more direct way and for some, simply reviewing in a more organized manner what we probably could do now if we had a mind to. That is the extent of it.

Mr. Martel: Have you a list of all these promiscuous people, Mr. Turner?

Mr. Turner: You and I are at the top.

Mr. Martel: Very good.

Mr. Turner: Then Bernie Newman.

Mr. Warner: I think Mr. McCaffrey is right. We should be very cautious. We will come to it when we do the freedom of information and privacy legislation. Under our new Charter of Rights and Freedoms, the committee would be treading on dangerous ground to start doing any kind of security checks on people. I would be very surprised if that is allowed in our country; nor do I think it is necessary.

Why are we changing the system? It is not because crooks have been appointed. It is the process of appointment and not necessarily the individuals who are appointed. I do not think we have a great concern or anything to be worried about with respect to the integrity of the individuals who are serving. Therefore, I do not see why we would be concerned at this point about getting into security.

Do you remember what they showed us in Washington? I was horrified. The grilling of the Federal Bureau of Investigation that goes on down there is absolutely horrible.

Mr. Chairman: We were all taken aback. Are there any other general comments? I have two or three other items. Mr. Morin raised one yesterday and I want to see if there is any discussion on that.

Mr. Bossy: I have one general comment. Do you really want to make a major change to the whole system? We can apply the United States system or the one that exists in a couple of other provinces, and that is that, effective with the next general election, all appointments are cancelled.

Mr. Morin: Defunct.

Mr. Bossy: Defunct as of the day of the election. The new government reappoints.

Mr. Chairman: All the judges would be off the bench.

Mr. Martel: It sounds like Nova Scotia or New Brunswick.

Mr. Bossy: Everyone would have to be either reappointed or re-elected as in the US system.

Mr. Chairman: Are there any other wonderful comments? I want to raise some matters that are not part of the report but which have been raised in our little discussion. I think at least we should consider the matter of terms of reference that Mr. Morin raised yesterday.

The terms of reference are directed towards what was just said. Do we want to consider what has become a practice, the appointment to an agency for two terms and then being automatically taken off? Should we look at a review on a one-term basis? Should we review the agency itself or the performance of the individuals, or is there a desire to go in much depth into that field? We could. My instinct would be not to. That is a separate issue, but I do not deny for a minute that it is related.

Mr. McCaffrey: Briefly on that, I did not hear Gilles make that recommendation, but from some frustrating experience, two times three is six sometimes meant that six plus one became the norm. That is not uncommon. It really stands in the face of the desire, which I believe to have been genuine, to speak to the numbers of handicapped, women and others that we have talked about being appointed. That moves things along more quickly. I think that one three-year term with a review would be a good step.

Mr. Chairman: Is there any consensus that an appointment would be for a fixed term and that a second appointment would be conceivable, but it would be seen as a term of three years?

Mr. Martel: Could we add a caveat to that? It could be one half; it could be staggered appointments so that there was continuity. In other words, you would not change the whole committee at the end of three years. If you appointed part of it in the first year, part of it in the second year and part of it in the third year, you would have a staggered arrangement. You would always have experience. One of the problems when you clear out a board is that you have no experience. You do not want that. You want some continuity.

Mr. Bossy: Why do they do that in the United States?

Mr. Chairman: We do it here too.

Mr. Turner: Yes, we do.

Mr. Martel: We should reinforce that.

Mr. Chairman: We would simply have a section in the report which addresses us to the matter of suggesting something that would be akin to a probationary term with the possibility of renewing for a second term. It would remind them that it would be helpful if these appointments were made on a staggered basis so that there is consistency. If there were six people on an advisory agency, two would be new all the time, but four would have some experience. A number of our agencies do that now.

Mr. McCaffrey: Do you know what happened? Rarely did somebody quit. More often than not a six became a seven. That was

not uncommon. Permutations and combinations being what they are, I can remember at one point some legitimate and proper changes should have been made to the Ontario Arts Council, but about eight of the 10 were all coming up at once. You could not move the way you wanted.

Mr. Chairman: Is there general consensus on the point that we should draft something along those lines and include it in the report?

Mr. Turner: It would be a good idea.

Mr. Chairman: Is there anything else on the term concept?

Mr. Warner: The only thing I would mention is that my experience was directly related to that. When we started the Scarborough Community Legal Services, we had to draft a constitution and bylaws. We specifically built in one third, one third and one third. There were two terms of three years each, with a third of the board up at each juncture.

We then specifically allocated what fraction of the board would be from the community, lawyers and so on. There was a designation. The result was there was always a continuity of experience on the board and there was always a turnover so new people were included.

After five years the board has functioned extremely well and the system has served the board very well. With a maximum of two terms, it also means there will be an opportunity for other people in the community to be involved. If we think the public should be participating as much as possible, then having two terms as a maximum means a lot of people who normally would not have an opportunity to serve would be able to serve. It is well worth including and I am glad Bruce mentioned it.

3 p.m.

Mr. Chairman: A second matter that was raised as we went through was that it has become apparent that we should do some work around the impact of other pieces of legislation. The most specific one I can think of is the freedom of information laws that are coming into Ontario. Freedom of information and protection of privacy laws will most likely be in effect when this process is in effect. What that really means is that a lot of what could be very private, confidential material used by another government to make its appointments will be public documents once these new laws come into effect, whether we like it or not.

In other words, we cannot operate in a vacuum here. We have been talking a reasonable amount about the gathering of information and we should be aware of the impact such legislation would have on it. If there is a data bank somewhere in a minister's or member's office, wherever it is, there will be access to that in a way that is different from what we have previously known.

If there is a freedom of information act in place and the information is kept on a computer or wherever, the public will have, in whatever limited degree, access to that information. People who are making application or who are nominated for various agencies will have to be informed of that. They will have to be made aware of that. I think that in the construction of the report we should at least acknowledge there is a different set of rules coming into play. Are we in agreement with that?

Mr. Mancini: Do you know when we are getting our computers?

Mr. Chairman: Yes, I know when I am getting mine; I do not know when you are getting yours. I am getting mine in June.

Mr. Mancini: For the ministry offices, it is a little different from being right here in the building.

Mr. Warner: I expect mine before the end of the month.

Mr. Chairman: The other thing that may be involved here is the matter of changes in federal legislation prohibiting certain kinds of discrimination. Provincial legislation is being changed as we speak, which may do that as well. We should be mindful of the ramifications of that. That may complicate various notions that someone might have about affirmative action programs, which may be declared discriminatory in some way.

We have to take note of that in the report. I do not think we have to make a lot of recommendations about it, but I think we have to make people aware that there are other pieces of legislation flowing through here and through the federal House that may alter attempts some people might make to do certain things. Are we generally in agreement that we would put in some acknowledgement of that kind of problem? I would anticipate it would be a problem.

We had a suggestion this morning that we do a section in the report on previous practices. I am not adverse to doing that, but I am going to tell you now that it is going to be very difficult to write a section on previous practices when there was no public information on that at all. In fact, when through the years members of this committee repeatedly asked, "How did you get this appointment?" no one knew because there was no process.

Mr. Mancini: I thought that could be the opening of the report.

Mr. Martel: We could have a commentary.

Mr. Chairman: We could do a little editorializing at the beginning of the report, but if we are looking for factual information, none exists on the public record.

Mr. Mancini: I think we should call witnesses.

Mr. Chairman: We can acknowledge that. Is there a general feeling here that we want to call witnesses? I do not know whom we would call.

Mr. Mancini: We could call Lorne Henderson or Claude Bennett. We could call a lot of people.

Mr. Warner: I find it strange that somebody who does not want any change in the system wants to dump all over the previous system.

Mr. Mancini: Maybe if you understand what happened before, you will see there has been change.

Mr. Warner: You do not want any change, so I do not see the point in dumping all over the Tories.

Mr. Chairman: Cut it out.

The best we can do on drafting something like that would be very simply to acknowledge there was no known public process prior to this. I do not sense an inclination among the committee to go seriously into calling a lot of witnesses. I would be prepared to entertain a motion which somebody could put. Do you want to put your money where your mouth is and put a motion in front of us to call witnesses? Do it.

Mr. Mancini: It is funny--

Mr. Chairman: Do it or shut up.

Mr. Mancini: That is fine, Mr. Chairman.

Mr. Chairman: Is that acceptable to you? I am merely telling you we cannot do very much in the way of that. We can put an acknowledgement in there. We can editorialize a little bit. We can recognize it, but we cannot be very concrete. That is the problem.

Mr. Warner: It has to be something general.

Mr. Chairman: Is there anything else that members want put in?

Mr. McCaffrey: I share your thought in just a tiny addendum that might help too, with regard to the preamble about the previous practices, that they were not public and there was some question, and speak in the preamble to the public's perceptions or concerns about patronage. That is why we are here and what we are trying to do. That is honest and it is pretty strong.

Mr. Warner: It is fair to say there was not a publicly known process. In the preamble or the opener, it is important for us to indicate that the committee is mindful of the mood of the electorate at large.

Mr. Chairman: I would anticipate something such as that.

Mr. Warner: The committee was sensitive to that, it listened to it and it wants to make certain changes. I do not know how lengthy a report we want, but it should include some sense of the difficulties and the options the committee has before discussing what we end up deciding upon, so that we give the notion of what the changes or the options were and what we ended up deciding upon. I hope it will be a consensus.

Mr. Chairman: Anybody else?

Mr. Martel: Maybe you could get John to work with Remo on drafting the commentary in the preamble.

Mr. Chairman: Or maybe we could shove your cigar through your ear.

Mr. Martel: I am just trying to be accommodating.

Mr. Bossy: We might be able to describe that it is the committee's wish that the word "patronage" be taken out of the vocabulary or removed relating to appointments. The word "patronage" should leave government.

Mr. Turner: That is wishful thinking.

Mr. Chairman: At the beginning of this report, we need to put in an attempt to describe the process we are trying to establish. For the first time in the history of this province, we are establishing a process for appointments in the public sector. It has not been done before, it is unique and it may not be perfect.

Is there anything else you want to include? From here on in, the process is that we will ask John to draft a report to provide us with some options to see whether we can get that done. We will try to have that draft in your hands as soon as possible, perhaps some time next week, but we cannot guarantee it. While we are travelling, we will have a couple of occasions when we can schedule some time to go over that and finalize it.

Mr. Warner: In terms of process, it would be a good idea to set aside a specific time when we are away to vote on this.

Mr. Chairman: I thought that is what I just said. We may not vote, but we will consider it.

Mr. Warner: I was asking that we vote on it.

Are all the members who are listed--all of us except the missing one--going to be together in the same place at the same time? Is the whole committee going?

Mr. Chairman: Yes.

Mr. Martel: He is not going to Atlanta.

Mr. Warner: Has anybody dropped out?

Mr. Chairman: No.

Mr. McCaffrey: Norm is not going to Atlanta.

Mr. Bossy: I do not think the chairman would call a vote with some of us in Toronto and some of us in Austin.

Mr. Chairman: This committee does not operate that way. I am suggesting to you that we will have the draft in our possession. We will seize any opportunities we might have to consider it further. If it is possible that we all agree on it and that we have arrived at a conclusion, we will do that. If that is not possible, we will have a vote when all members are present and everybody is properly represented. We will not have votes otherwise.

Mr. Morin: May I make a suggestion? I suggest we do this only when we come back.

Mr. Chairman: That is the most likely course.

Mr. Morin: When we come back, we will be more rested and we will look at it in a more objective way. During that time we will have a chance to decide.

Mr. Martel: If that is going to be the case, you had better get Smirle or someone to find out from the members where they are going to be after we get back from Atlanta. I am out on the road for five weeks.

Mr. Chairman: I just said that we will have a vote when all members are present. That means we will not have a vote when we do not have all members present. How is that for a reasoned solution?

Mr. Martel: It might be May when we vote.

Mr. Bossy: If we are meeting in Austin or Dallas or somewhere on this, all the members may not be coming back.

The committee adjourned at 3:10 p.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES, BOARDS AND COMMISSIONS
FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

TUESDAY, MARCH 25, 1986

Morning Sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES, BOARDS AND COMMISSIONS

CHAIRMAN: Breaugh, M. J. (Osnawa NDP)

VICE-CHAIRMAN: Mancini, R. (Essex South L)

Bossy, M. L. (Chatham-Kent L)

Martel, E. W. (Sudbury East NDP)

McCaffrey, R. B. (Armourdale PC)

Morin, G. E. (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L., (Oxford PC)

Turner, J. M. (Peterborough PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Substitutions:

Gigantes, E. (Ottawa Centre NDP) for Mr. Martel

O'Connor, T. P. (Oakville PC) for Mr. Sterling

Clerk: Forsyth, S.

Assistant Clerk: Mellor, L.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Attorney General:

Scott, Hon. I. G., Attorney General (St. David L)

McCann, S. B., Counsel, Policy Development Division

From the Management Board of Cabinet:

White, F., Co-ordinator, Freedom of Information Project, Management Policy Division

From the Canadian Bar Association--Ontario:

Langford, J. A., President

Jacobs, G., Chairman, Committee on Computers and Privacy

Bonner, P., Member, Committee on Computers and Privacy

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES,
BOARDS AND COMMISSIONS

Tuesday, March 25, 1986

The committee met at 10:12 a.m. in room 228.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

Consideration of Bill 34, An Act to provide for Freedom of Information and Protection of Individual Privacy.

Mr. Chairman: We have a quorum and we will proceed. We are going to begin three days of public hearings on Bill 34 and on some amendments that will be proposed by the Attorney General (Mr. Scott). We are going to begin this morning by offering the Attorney General an opportunity to make some opening remarks.

Hon. Mr. Scott: I am very happy to be with the members of the committee this morning as we begin this important phase of public debate and discussion on what I regard as historic legislation in Ontario, a bill that will ultimately affect and, I trust, benefit all our citizens.

Later this morning I will be discussing some of the government's proposed amendments to the bill. These are based on a review of the legislation that has been undertaken in the ministry during the past few months in the light of public comments following its introduction.

Let me state at the beginning, however, that the government has decided to add 150 boards, agencies and commissions to the ministries that are already covered on the face of the bill. A list is available to the committee and is attached to the statement you have. I will be discussing the matter in more detail when I get to our proposed amendments.

Bill 34 establishes the general right of access to government information, and it goes a step further. In situations where there is a grave environmental, health or safety hazard, the government is obliged to disclose the information whether any formal request has been made or not.

I am sure my colleagues will agree that this is a bill whose time has come. The age of information is upon us. As a government and as a Legislature, we have an obligation to provide open government regarding the dissemination of government information. At the same time, and equally as important, the informational privacy of our citizens must be protected.

I would like to emphasize that last point. Bill 34 has become widely known as the freedom of information act, but I hope members of the public will not lose sight of the fact that the legislation also provides for stringent protection of individual privacy. It has a dual objective. The intention of the bill is to open a new window on government, not to provide some draconian, Big Brother type of springboard for the invasion of an individual's privacy.

Today, as we begin public hearings, I want to emphasize that this act promotes the general principles that government information should be available to the public and that personal information respecting individuals, which is held by government, should be available only to the individual. The

other principles incorporated in the act can be summarized in the following way:

1. The public has a legal right of access to information in government records. I emphasize "legal right."

2. In certain narrowly defined situations where the public interest favours confidentiality, such as where a law enforcement investigation is proceeding or a third party's commercial interests are involved, as you will see in the legislation, the government can and, in some cases, must refuse to grant access.

3. Decisions by a government institution to refuse access can be appealed to an independent Information and Privacy Commissioner.

It is essential to emphasize again that the legislation establishes a process by which individuals may obtain access to government information as well as review information of a personal nature directly pertaining to them.

On the surface, certain sections of Bill 34 may seem complicated, but this is a necessary consequence of a bill that starts with a presumption, as this one does, that all government information should be public. This point was made in the second reading debate. To further that approach, we must ensure that exceptions are as specific and narrow as possible. Sometimes a byproduct of that philosophy is complexity.

By following the recommendations of the Williams commission to the greatest extent possible, and being precise and narrow with the exceptions, some sections of the bill may seem lengthy, but it is this precision that provides the balance needed between access to information on the one hand and the exemptions on the other. The bill is designed to work.

Also, it is important to remember that there will be some qualifications or exceptions necessary to protect not only the legitimate needs of government for confidentiality but also the right of an individual to privacy. After all, there are legitimate needs for government confidentiality in such areas as law enforcement, cabinet documents and economic information. I believe everyone on this committee would agree to these types of exemptions in the general sense. I am open to your suggestions on ways to fine-tune the specific exemptions in these areas. You will appreciate that many of the details incorporated in the bill are judgement calls. As I said in the House, I am anxious and open to the views of this committee and the public who will make representations here beginning today.

I would like to turn now to some of the amendments the government will propose. These have been approved by cabinet, and we think they add significantly to the effectiveness of the bill.

10:20 a.m.

First, I am pleased to announce the institutions proposed for coverage by this legislation. The proposal would substantially implement the recommendations of the Williams commission. The commission recommended coverage of agencies funded by the consolidated revenue fund, such as the Ontario Municipal Board, and agencies controlled by the government, either through ownership or the power to appoint a majority of the board, for example, Ontario Hydro. For the most part, these agencies are listed in schedules 1 and 2 of the Ontario Manual of Administration, and the list has been made available to the committee today.

There may be a few changes proposed to the list of agencies for one practical reason or another. For instance, the provincial courts committee that recommends judges' salaries should be independent of government and accordingly should probably not be included even though it falls in either schedule 1 or schedule 2. On the other hand, the Workers' Compensation Board, a schedule 3 agency in policy terms, is included on the list.

Two amendments will be proposed by the government to section 17 of the bill.

The first requires the changing of the word "may" to "shall." This is not a grammatical change. It has important implications, as you will see. This change will make the exemption for third-party commercial information mandatory rather than discretionary when the information is covered by the exemption. The head of a ministry or agency will have no choice but to refuse access to the record if it fits within the exemption criteria that are set out in the section.

The second proposal is to add labour relations to the list of types of information contained in the opening flush of section 17. The effect of this will be to protect from general disclosure sensitive labour negotiation information supplied to a mediator by the employer, the trade union or the employees during the course of a labour dispute.

We have a further proposal for simplification of access in the form of an amendment to section 32. I am proposing that one fully indexed compilation on the operation of institutions be made widely available to the public by the responsible minister rather than have each institution publish its own compilation. We believe this amendment will make the directory more accessible to the general public because it will be consolidated.

There will also be a change to section 46 to clarify the right of appeal to the Information and Privacy Commissioner. There has been some misunderstanding among the public about our intention with respect to appeal. As I said in the House, we propose to make plain the nature of the appeal that is contemplated.

The proposal will be to delete in subsection 46(1) the words "but the exercise of the discretion of a head to disclose or refuse to disclose a record which is found to be included under an exemption in section 13, 14, 15, 16, 17, 18, 19, 20 or 22 is not appealable." The presence of those words in that section raises doubts in some minds. On the day the bill was introduced, I attempted to clarify that the government did not propose a full appeal right to the commissioner. We will be taking those words out for clarity.

A new subsection will be proposed that states, "The commissioner shall not order a head to disclose a record where the commissioner finds that the head may refuse to disclose the record." In other words, if the commissioner finds that the document or record is exempt under the definition in the statute, he will not have the right to order its disclosure none the less.

We will also be proposing an amendment designed to preserve existing rights of access to information. The intent of the amendment is that where a head may give access to information under this act, nothing in the act prevents the head from giving access to that information in response to an oral request or in the absence of a request.

The amendment will also state, "This act shall not be applied to preclude access to information that is not personal information and to which

access by the public was available by custom or practice immediately before this act comes into force."

Again, by this amendment we are ensuring that access to public information prior to the legislation is not hampered by any of the provisions of the proposed legislation. For instance, everything does not have to be in writing, given that information is imparted by telephone every day to journalists, for example, and other members of the public.

I would now like to address the question of providing a formal right of appeal to the courts, which has been recommended by some observers and rejected as a proposal by others.

Bill 34 is silent on the role of the courts in reviewing decisions of the Information and Privacy Commissioner. This is no accident. However, it is clear under the law of Ontario that judicial review of decisions of the commissioner will be available pursuant to the explicit provisions of the Judicial Review Procedure Act. Therefore, the silence of the bill on this point ensures that the commissioner's decisions will be reviewable under the Judicial Review Procedure Act.

Judicial review will be available in any case where the commissioner failed to follow proper procedures, exceeded the jurisdiction conferred by statute or erred in law.

Some have suggested the bill should go further and provide a right of appeal to the courts on all questions of fact and law, whereby the court would be able to rehear the matter entirely and issue its own order as if it were the commissioner. To me, such an elaborate and costly right of appeal would do much to undermine the principles of accessibility and informality which are the hallmarks of the bill. The power of the government to appeal to the courts--and in the nature of the process, it would be the government that is appealing in most instances--could be very discouraging and mark an important economic disincentive to citizens who desire to exercise their rights under the bill.

I have confidence that the decisions of the commissioner will be fair and impartial and that there will be little need to resort to the expensive mechanism of a full appeal on the merits of the case.

The approach we have adopted with respect to appeals and judicial review is consistent with what was proposed in Dr. Williams's report.

This bill has been in the works since 1977 in some fashion or other. I see Donald MacDonald here. I am sure they were talking about freedom of information when he first came to the Legislature. They have not stopped since.

You will recall the Commission on Freedom of Information and Individual Privacy was established in 1977. It made a full, thorough and detailed examination of the subject and reported. Since that time, proposals have taken various shapes and suggestions, but I am pleased to say this will be the first time an all-party committee of the Legislature has been able to review freedom of information legislation prior to passage.

It is no accident that this legislation was the first bill of this government. It represents one of our fundamental concerns. To the end of its passage, preparations are already being made within the public service to accommodate the public interest this bill will generate.

Freedom of information co-ordinators have been designated for each ministry. They are advised by an implementation team reporting to my colleague the Chairman of Management Board of Cabinet (Ms. Caplan). Subject to the final legislation, training sessions are already under way regarding the principles and necessary requirements of the bill.

Finally, I am delighted the committee is to hear public representations on this landmark legislation. Those of us who serve in the political forum will consider all representations carefully.

I have outlined a few of the amendments the government will be introducing for consideration of the committee. These proposed amendments will be provided to you in the revised and reprinted version of the bill now being prepared, which will be available when we come to clause-by-clause review.

10:30 a.m.

Mr. Chairman, at your request, I was asked to have staff available to present the bill to the committee and to those members of the public who are here so that you will have an analytical base for the representations you are going to hear and the discussions we will undertake. With me from the ministry are Doug Ewart, Steve McCann and Frank White, who have been co-ordinating the response of the government to these changes. I will ask them to take over under your direction and take the committee through the bill, if that is your desire.

Mr. McCann: We have some slides prepared. I do not know how feasible it is going to be to display them in a satisfactory way here. What do you think, Mr. White? Should we put the slides up?

Hon. Mr. Scott: I found that you are not really a government until you have slides. They are the big thing.

Mr. Chairman: Do not start sliding too far.

Mr. McCann: We have extra copies of the slides. Perhaps it would be better if we distribute them to the committee. I am afraid we do not have enough for everybody.

Ms. Gigantes: Why not show the slides?

Mr. Chairman: We can try the slides.

Mr. Mancini: Flip the lights out.

Mr. Chairman: They want to see pictures.

Ms. Gigantes: It allows the audience to know what we are looking at.

Mr. Chairman: I believe the apparatus is roughly working. Let us proceed. Mr. White or Mr. McCann, whoever is going to do this, you are on.

Mr. Treleaven: I was wondering why the list at the back of agencies, boards and commissions shows the Wolf Damage Assessment Board? I was wondering what your particular interest in that area is.

Hon. Mr. Scott: That information has to get out. That is why the Wolf Damage Assessment Board is listed.

Interjection: Can we not have a select committee look into it?

Mr. Chairman: I knew you would pick up on this.

Hon. Mr. Scott: The residents of Oxford county are really anxious to find out what has been going on at the Wolf Damage Assessment Board.

Mr. Treleaven: The only wolves we have had there are friends.

Hon. Mr. Scott: There are not very many then.

Mr. Chairman: We are on. Go ahead.

Mr. White: What we plan to do is structurally go over the bill in the first instance and then go through a few of the more important provisions of the legislation.

Hon. Mr. Scott: Mr. White, you will have to talk louder because we have an audience and we want them to hear.

Mr. White: The bill is divided into five sections. Before that division of sections, there is a purpose statement. Then there are the definitions in the legislation to cover items such as records and personal information for purposes of this legislation.

Part I is the section that designates the responsible minister for purposes of this legislation, and it establishes the office of the Information and Privacy Commissioner. In that section is also a statement on the administration of the office of the Information and Privacy Commissioner; the term of the commissioner, which is five years and renewable for another five years; and other specifics about the commissioner's office.

Part II of the legislation establishes a general right of access to government information. There are a number of specific exceptions to that general right of access, and those are listed in the following sections in Part II. At the end of Part II there is also a statement on severability of information, meaning that if information is available and if there is some exempt information on a record, that exempt information would be removed or blotted out and the information would be available to the public.

Part III of the bill--and this is the part that has been referred to as the privacy protection scheme--regulates the collection, the use and the disposal of personal information in the first part. Then a section in the latter part--I believe it is a section in the early 40s--provides for the right of access of an individual to his own personal information, a right to request a correction of his personal information and, if the head does not agree that the information can be corrected, then at least a right to file a statement of disagreement saying he disagrees with the personal information that the institution has on him.

Part IV establishes an appeal process, and I believe the Attorney General mentioned this morning that there will be an amendment to that. Basically, it covers the mediation, then the inquiry of the commissioner and the circumstances for that.

Part V provides for the fees that will be collected and also for other general matters. There are confidentiality provisions in other legislation that will be in place for another two years and a number of other circumstances and specifics--for instance, regulation-making power--that are covered in that section of the legislation.

That is structurally how the bill works.

I would mention that, on personal information, there are three areas where personal information can be disclosed. In section 21 it is a request by a third party for personal information on an individual; it covers that circumstance. In section 39 are the normal allowable disclosure patterns without a request for personal information disclosure by an institution. The section in the early 40s covers a request by an individual for his own personal information. Those are three areas for disclosure of personal information, depending on whether it is request by a third party or a request for personal information by the individual.

On the general access to government information, every person has a right of access to information maintained by an institution. That is not qualified in any way. The access request must be in written form. The information is subject to severability, meaning that if there is information on a record that could be exempt and if that information would be available anyway, notwithstanding the exemptions, the information that is available on that record would be made available to the individual requesting that information.

There is a section on machine readable records. That section provides that if an institution has information in machine readable form and if an individual is requesting it in another format, there is a responsibility on the institution, subject to the regulations, to provide that information in a new report, new type, new format.

10:40 a.m.

There is an onus on the institution to assist with the identification of records, so that even though the request has to be in writing, there is a responsibility on the part of an institution to assist an individual in formulating that request so he can have access to information that the institution maintains.

Generally, there is written notification required whenever time limits are extended or there is a decision on the part of a head to grant access, to deny access or to extend a time limit. There is a written notification that goes to the individual.

A person has access to a copy of a record or the original, and it will be subject to the regulations. That is in there so that if there is some doubt about exactly what the requester wants, the requester could have an opportunity to review a number of records to identify exactly what he wanted and also, of course, to keep the fees down if fees were going to be charged in that circumstance. The requester will get just the information he actually needs or wants.

There are time limits on responding to an access request. Generally, it is 30 days with an extension in specific circumstances, and it is a reasonable extension. There are no number of days specified in the bill right now.

Ms. Gigantes: Can I ask a question? On the items we have listed under "Access," can you refer us to the sections that deal with the new machine readable records that can be created?

Mr. White: That is in the definition of record in the purposes section.

Ms. Gigantes: The other one concerned the person who is given access to a copy of a record being subject to regulation.

Mr. McCann: That is section 30, particularly subsections 1 and 2.

Machine readable record is in clause (b) of the definition of record, which is in section 2 of the bill.

Mr. White: The same would apply to personal information.

Mr. McCann: Having established a general right of access, the bill goes on to provide some exemptions from that right of access, some grounds on which the head of an institution may, or in a few cases must, refuse access.

The first that ought to be considered are the confidentiality provisions in statutes other than Bill 34. These are provisions that require or give a discretion to maintain the secrecy of certain information that comes to the attention of officials in the course of performing their duties. The bill says that it prevails over all other confidentiality provisions, but that provision does not come into force for two years.

During that two-year period a committee of the Legislature, in fact the very committee we are before today, has the responsibility for considering the confidentiality provisions and making recommendations on which should be amended, repealed, continued in force and so on. A process is set in place for dealing with the confidentiality provisions of other statutes, a process that will in due course involve this committee.

Turning to Bill 34 itself and the exemptions it sets out, by way of introduction I should say there are essentially two kinds. The first kind we call mandatory exemptions, by which we mean that the necessity of refusing access to a record is stated in a mandatory form by the use of the word "shall." These sections commence by saying, "The head of an institution shall refuse access," and then set out the circumstances.

The discretionary exemptions, which are by far the larger number, give a discretion to the head. They start out by saying, "The head may refuse to disclose," which suggests that the head may give access notwithstanding the existence of the exemption.

There are really only two mandatory exemptions contained in the bill. One is for cabinet records in section 12, and even that exemption can be overridden if the consent of executive council is given. A minister or head of an institution on his or her own cannot give access to cabinet records, but the body of cabinet can do so.

The other mandatory exemption is for personal information. That is where one individual applies to the government for access to information about another individual. It is part of the overriding concern for privacy in the statute that the head of an institution must not give access to personal

information about an individual. That is contained in section 21, which does allow access under some circumstances. I am sure we will be discussing that in more detail later. In general, it is part of the privacy protection scheme that access to information about an individual shall not be given.

There is a long list of discretionary exemptions. One is advice to government in section 13. That section contains a long list of exceptions to the exemption, that is to say, circumstances in which information must be released, even though technically it might fit within the exemption. Section 14 contains an exemption for information related to law enforcement. There are discretionary exemptions for information relating to other governments and for matters of national defence.

The next one on the list is third-party information. There is a discretionary exemption at the moment for commercial information supplied by the private sector to government. As the Attorney General indicated this morning, the ministry is proposing to amend section 17, which is the relevant section, to make that a mandatory rather than a discretionary exemption; so it would go to the previous category, number 2.

There is a discretionary exemption related to economic and other interests of Ontario in section 18; an exemption for material that would be covered by solicitor-client privilege; an exemption in cases where the information is soon to be published in any event; and an exemption for circumstances where release of information might create a danger to an individual's health or safety. Many of these exemptions, indeed most of them, are consistent with exemptions in the legislation of other jurisdictions and in a general sense consistent with the recommendations of the Williams report.

The next area that should be covered relates to appeals. As we have heard, the act constitutes an Information and Privacy Commissioner who is charged with resolving disputes that arise under the operation of Bill 34. The first step in the resolution of a dispute is supposed to be mediation, or the legislation directs that it shall be mediation. This is an attempt, in an informal way, to bring the institution and the person who is requesting information together to see if the issue cannot be worked out without the necessity of a hearing and a more expansive and formal procedure. However, it is recognized that mediation is not going to work in every case, that some cases will have to go beyond mediation to the commissioner and an inquiry will have to be launched to determine the merits of the dispute.

The commissioner has the power to inspect the record in question and to examine anybody he or she feels has relevant evidence on oath. The commissioner has very wide powers on an inquiry to determine what is in the record in question and what sort of evidence is available surrounding its refusal. At the end of the process, the commissioner has the power to make an order. That order could be that the information is not exempt as claimed by the head of the institution and, therefore, the information should be released.

10:50 a.m.

As the Attorney General set out in his statement, there is a limited power of review in the courts under the law of judicial review, which is limited to questions of law or procedure. When I say limited, I do not think it should not be thought of as a very narrow limitation, but it is supposed to be to make sure that the commissioner has followed fair procedures and has

been correct in his or her interpretation of the law, rather than a wide-ranging inquiry in which the court starts all over again and substitutes its opinion for that of the commissioner, but there is a supervisory function in the courts.

The last area of the bill I want to deal with is related to personal information. Again, this is what has been referred to as the privacy protection scheme. It is really the other side of the coin from the open government part of the bill in that this deals with the protection of the privacy of individuals.

The first thing the bill does is place quite stringent restrictions on the collection of personal information. The basic rule is that personal information--and "personal information" is very broadly defined--is to be collected only from the individual to whom it relates. It is not to be collected from other persons except in a quite narrowly defined set of circumstances that are set out in section 36 of the bill.

It is important to note that this part of the bill, dealing with collection of personal information, relates not only to recorded personal information but also to orally collected personal information. It would apply to the collection of personal information over the telephone, for example. It is a very strict set of limitations on the ways in which government collects personal information.

The bill also requires that at the time of collection, or shortly thereafter, the authority for the collection of the information must be made clear to the person from whom it is collected. This, again, is a control on the collection of personal information in that there must be authority for its collection and that authority must be made clear to the individual.

The bill also provides that personal information must be maintained within the institution for a period of time that can be set by regulation. Personal information that is important to an individual will be kept under conditions set by regulation so that the individual can have access to it to exercise his or her rights of correction.

The bill also provides restrictions on the use and disclosure of personal information. These are contained in sections 38 and 39 of the bill. They set out the rules under which government, in carrying out its normal, day-to-day operations can use personal information and can disclose it. As has already been mentioned, a right to request that a correction be made to personal information is established and the individual will, at a minimum, be entitled to indicate his or her disagreement with the personal information that is on file in a government institution.

Mr. White: The last section of the bill is the general section that deals with one of the more important things that is usually discussed with this type of legislation: the fees and the circumstances where a need can consider waiving the fees. There is further information on the responsibilities of the commissioner, in that the commissioner can order an institution to cease or destroy the collection of personal information if it contravenes the legislation. It provides for an offence and penalties to obtain or disclose personal information contrary to the circumstances in the legislation. Also, it makes provisions for the institutional head to delegate his or her responsibilities in writing.

Last, there is a point about the publications that are required by the

legislation. The Attorney General has already mentioned that the government will propose an amendment to the number of publications that are to be made available to the public. The information would be the same. First, it is generally a description of the organization and records of each one of the institutions covered by the legislation and second, a publication on the personal information maintained by the institutions covered by the legislation. There also would be information on the access locations where an individual could request information from the institutions covered by the legislation. That is a fairly important part because it presents to the public what institutional information there is and how people can request access to it. Thank you.

Hon. Mr. Scott: Regrettably, I am not going to be able to be present for most of the submissions because of another cabinet obligation. I have had the advantage of meeting with a number of people who will be making submissions to you. Mr. Ewart of the ministry is here to listen to the representations on behalf of the ministry and will report to me what he hears. I will also have the opportunity of reading the transcript.

I want to let those who are making representations know that if I have not met them to discuss their representations already, which I have in a number of cases, I propose over the next few weeks to invite each of them to meet with me at a time convenient to them so that I can get at first hand a direct sense of their feelings about this bill, which of course the committee will have had the opportunity to do.

I want to do that because in introducing the bill we made it perfectly plain that this is a radical and important piece of legislation. There is no assertion that it is perfect. Indeed, its imperfections may be exposed. We want to correct those and we are confident that not only the legislators who are here present but also the public have much that is useful to say. That will help shape the bill in many important respects. When I leave, I hope those who make representations this morning--I guess the Canadian Bar Association is first--will not feel I am leaving in a fit of pique. It is because I have to go somewhere else.

Mr. McCaffrey: Mr. Chairman, may I be permitted one very general question before the Attorney General leaves? It is not meant in any way, shape or form to be argumentative and it is sincerely placed.

Interjections.

Mr. McCaffrey: No, it is not argumentative.

Mr. Chairman: If you will place your question, I will be happy.

Mr. McCaffrey: If I wanted to get into a fist fight, I would not pick Sugar Ray Leonard; if I wanted to argue, I would not pick Ian Scott.

Let me as a layman share with you from where I think the thrust for this freedom of information legislation has come. People far more experienced than I have helped me get to this point of my question. The principal thrust for the legislation in the United States was the post-Watergate hangover. So we have the legislation in place there. We have it in place in most European states; not, however, in the United Kingdom.

My question really deals with the form and nature of the British parliamentary system and its relative openness, the relative avenues available to pursue information.

If Watergate was the principal thrust for the US, what is the principal thrust for it here?

Hon. Mr. Scott: First, I am not sure Watergate was the principal thrust even in the US, though I think you are entirely right to say that initiated the legislation. My sense has been that people interested in the government process for at least a generation have been concerned about the availability of information that government has on important public policy matters. I think people who have been concerned about it for that generation have not been simply opposition members and other legislators, though their motives and interests are proper and clear, but the general citizenry who are concerned about the way government makes decisions, the basis on which they are made and whether government has truly considered all the appropriate information.

11 a.m.

On the information side, I think that is really the thrust of the bill. It is a generation old. The citizens--for whom, after all, government is run--will have an opportunity to assess what government is doing; to assess the information government is getting for its accuracy and fullness and thus be more fit by knowledge to play the citizens' real role, which is to be a critic of the government they have elected. That is the thrust and I think it long antedates Watergate.

Frankly, I do not find any of that inconsistent with the nature of a parliamentary democracy. I am not mesmerized by the fact that the UK has it or does not have it. It has many things that are good; it has some things that perhaps have not worked out so well. If they lack a freedom of information act, that is interesting, but it is not a significant value judgement, as far as I am concerned, on the propriety of such an act in Ontario.

On the privacy side, the thrust that supports the legislation is more recent. Increasingly, there has been a sense that government collects information in a haphazard way, that there is no opportunity to correct information that may be mistaken and that the use of this information can be personally damaging. Only in the past 10 or 15 years has the public come to sense the importance of that part of the legislation.

Mr. McCaffrey: I have no difficulty with that, but can you as Attorney General and as a senior member of the government tell me what information is not now available to citizens that would be available after the passage of this freedom of information act?

Hon. Mr. Scott: A very substantial amount. The point of this legislation is not that you can point to any particular document that we might or might not release; the point of this bill is that a citizen who wants information can compel its release. He does not have to go on bended knee to some minister. We hope he will do that first because it will be convenient, but he does not have to do it. He can compel it.

If the minister says he thinks it is exempt because it is a cabinet document or because it has to do with the security of a law enforcement investigation, the citizen does not have to take that as gospel. The citizen can go to the commissioner and say: "I think the minister is crazy. I want this information. It should not be exempt." Under this scheme, the commissioner does not make that decision in the abstract. He looks at the information, makes his own judgement and has the right to examine anybody about the information.

For example, if I as Attorney General refuse some law enforcement information and the citizen is content, so be it. If he is not content, he can go to the commissioner. The commissioner will say, "Mr. Scott, I want to see the information." I have to disclose it to the commissioner. He can say: "Your officials have told you that this should be exempt because of its impact on such-and-such a case. I want to examine those officials. Who are they? Produce them." The real question for the Legislature is, do we want to create a system in which the citizen can compel that? I think the answer for our party is yes.

Mr. McCaffrey: Thanks. That is very helpful.

Hon. Mr. Scott: Thank you for the question.

Mr. Chairman: We are ready to proceed now with our first delegation. The first is exhibit 78 from the Canadian Bar Association--Ontario. The two people who will be appearing before the committee this morning are J. Alex Langford, president, and Gordon Jacobs, chairman of the committee on computers and privacy. I see some additional people and I am going to ask you to identify them.

THE CANADIAN BAR ASSOCIATION--ONTARIO

Mr. Jacobs: Penny Bonner and Chris Bredt are additional members of our committee. I apologize for not having given their names to the clerk earlier.

Mr. Langford: I am Mr. Langford, president of the Ontario branch of the bar association. Mr. Jacobs, who just spoke, is chairman of our committee. He prepared our brief and has been studying it for some time. I am not going to say much. He is the point of our brief.

I just want to say that our association's interest in this matter--you should always be concerned where people who appear before you are coming from. We are coming from both sides of the issue. We have lawyers who are keenly anticipating the passage of this act because they want to use it to obtain information. If you are a lawyer acting for a newspaper, your newspaper is going to use this to pry things out of the bureaucracy at Queen's Park.

On the other hand, we have all sorts of lawyers who are concerned about preventing information from being released, private or commercial information or some category of information. We come at it from both sides, so when we get to a committee of this type, we are technical. We cannot agree about the broad policy, but we can all agree to help make a law better. That is what we are here to try to do.

We have a legitimacy in this business. As far back as 1976, the Canadian Bar Association, at its annual meeting in Winnipeg, made freedom of information its topic. We were pretty well the prime lobby to get the federal government to pass the first such law and we are now about to present a national brief. The House of Commons has a statutory review procedure and we are about to put in a brief reviewing its legislation. We have been in this business a long time and we are as pleased as anything that Ontario has finally got around to doing something about it. We are in favour of having a law on this subject.

After that, I will leave it to our chairman, who is the real expert. I am just the president.

Mr. Jacobs: As Mr. Langford said, we are pleased with the thrust of Bill 34 and with the political thrust the Ontario government is putting forward in Bill 34. We had looked earlier at the previous bill, Bill 80, which never really got to this stage. Again, we laud the concept of freedom of information and we are grateful for the opportunity that has been given to us to make submissions and to appear here today.

We have provided our submission in written form as your exhibit 78. I understand it arrived only yesterday and many of you have seen it this morning for the first time. I apologize for that. I might add that we will take this submission away and give you, within the next few days, a table of concordance which, in effect, will lift out any statutory amendments in barebones fashion that we would like put forward. In that process, we will take into account the amendments the Attorney General provided this morning.

If I might take the committee through the CBAO's submission, you will see that we have essentially five areas of concern. You must bear in mind at all times that freedom of information and protection of privacy legislation is a balancing act. It is a balancing act between the legitimate needs of the citizens and of the government to keep things private.

Bill 34, with the suggested amendments, represents this government's proposed balancing act. We have some adjustments we would like to propose, because we think it is going to tilt in a few directions. There are five areas that concern us and they are not in any particular priority.

The first is the appeal provisions. We do not believe the appeal provisions in this bill provide a true, independent review of the decisions of the heads of institutions and of the commissioner. The comments of the Attorney General this morning echo those he made in the House and on other occasions. The amendment he suggested to section 46, where he took out some words and put in some additional words, in my view really does not change anything. There are just some technical wording changes; the policy is unchanged. We will get into that in a few minutes.

Second, we are going to deal with the administrative provisions. The procedures for obtaining information and making requests should be fine-tuned a little bit to make information access requests as expeditious as possible.

Third, some of the exemptions in part II are unduly broad, in our view, and we will be dealing with those.

Fourth is the third-party information, primarily sections 11 and 17. Again, we note the amendments to both those sections today but we do not believe they adequately protect the rights of third parties and, with that, the voluntary nature by which information submitters will disclose the information, which is one of the objectives set out in the bill.

Fifth, we feel there are some problems in the protection of an individual's right to privacy. We do not think the legislation is drafted quite properly to provide adequate protection.

11:10 a.m.

The other point we make at the bottom of the first page is a concern we have about the Information and Privacy Commissioner office itself. As you know, there is an inherent conflict between an information commissioner role and a privacy commissioner role. The government of Canada in its legislation

has two separate and distinct offices. We think that by combining those offices, as Bill 34 does, the inherent conflict cannot be avoided and will complicate matters. That is a concern we have that floats on top of the entire bill.

We suggest that this committee should invite both of the federal commissioners, the privacy commissioner and the information commissioner, to come and speak to you on the federal experience. We think that would provide a good window on how this legislation works in the federal jurisdiction and could lead to avoiding some problems early on.

As Mr. Langford said, the federal acts require a periodic review by the federal standing committee on justice. The Canadian Bar Association national office is in the process of putting forward this week or next a submission on fine-tuning amendments to the federal bills, and we have factored those comments into our discussion today.

I will turn first to some detailed examination of the appeal provisions in the bill. The bill as drafted, and even as amended today by the Attorney General (Mr. Scott), does not provide for any appeal on the exercise of discretion of the head of an institution. I ask you to cast your minds back a few minutes to when you saw that list of mandatory exemptions and discretionary exemptions. You saw that there were two mandatory exemptions--I guess there are now going to be three--and eight to 10 or more discretionary ones. When you look at the nature of the appeal and recognize that this bill, with the amendments proposed today, will deal only with appeals to the mandatory types of issues, I think you will see that there is a serious problem there.

We think the exercise of the discretion itself by the head of an institution is something that should be appealable to the commissioner. In the absence of that you really have no effective appeal whatsoever, and we feel that where the discretion is appropriate under the act, so is an appeal.

We have given some examples on page 2 of our presentation of where we feel the problems lie, particularly where third parties are affected, and we have suggested an amendment on page 3. We would like the words that were suggested today for deletion to be deleted, but we would like no words to be substituted therefor. We would simply like there to be a full appeal to the Information and Privacy Commissioner, whether it is on the exercise of a discretion or not.

One of the practical problems is that the head of an institution may exercise his or her discretion and refuse to disclose information if it would make that head of the institution look bad. That is one of our concerns, because this takes it completely out of the appeal process. If the head of an institution is trying to cover up something in his own department or institution, he simply has to exercise his discretion and say, "No, we are not going to permit the disclosure of that information," and there is no right of appeal under this act to anybody. We feel that this is a fundamental flaw in the bill.

The federal legislation is not that restrictive. It does allow a much wider appeal to the information commissioner under the access-to-information legislation.

Part of the problem that we see--a practical problem and, frankly, a government problem--is that if you do not allow appeals on the exercise of

discretion, information providers may become increasingly reluctant to disclose information in as much detail as government may like. We would like to echo the objective of this act, which is to not put up obstacles in the filing of information with government. We think government generally needs that information for good governance, and we would not like to see this as an obstacle in the path of that. As I say, we have suggested the deletion of the very same words that the Attorney General did in fact delete today, but we would not like to see any words substituted therefor.

Let me turn now to the appeal to the courts. The Attorney General went through some rationalization this morning on why there should not be an appeal to the courts. Our committee has looked at this long and hard and we simply do not agree with the policy that the Attorney General set forth today. He mentioned that the appeal provisions here are in conformity with the Williams commission report.

Again, we do not agree that that is what Mr. Williams was saying. Mr. Williams did suggest a two-tiered level of appeal, once to an information commissioner and then, in effect, to an independent appeal tribunal. That is not what this bill provides. This bill provides a one-level, dead end appeal on very limited grounds.

I would refer the committee to the federal legislation, the Access to Information Act, where there is a first-tier level of appeal to the information commissioner, a very wide appeal ground, and from there again a very full range of appeal to the Federal Court of Canada.

The Attorney General in his remarks today talked about the problem that government could seek to obstruct applications for information by appealing things all the way up to the courts, making it economically and practically unreal for an individual to get information. It would just outgun him in the courts.

The experience in the federal jurisdiction is not that at all. In fact, all of the appeals to the Federal Court--and there have been only three or four that I am aware of--have been initiated by the private sector, not by government, and they have been initiated because government has been reluctant to disclose information. I simply do not accept the arguments put forward by the Attorney General on that basis.

Again, the Canadian Bar Association, in the context of the drafting of the federal act in 1981, put forward a model act of its own, and in it there were full appeal rights to the Federal Court.

Bill 34 suggests that there should be an independent review. It is set out in part I of the act, the statement of principles. In our view, the appeal structure in this bill at present does not give any independent appeal right whatsoever.

One of the other benefits of an appeal right to the courts has been shown by the federal experience. Under the federal regime it is possible for counsel on either side either to conduct the court hearings in camera, as the federal bill provides, or to have the court order the sealing of the record that is itself the subject of the information request. That has worked very well in that while the information is sealed, counsel for both sides give undertakings to the court that counsel for both sides give a view to settling what will be disclosed and what will not. Under Bill 34 there is no mechanism whereby counsel would have information made available to

them on any basis, whether they give undertakings or not--again, an obstacle in the appeal process that we think will detract from the positive aspects of this bill.

If I may turn to the concept of the mediator under Bill 34, the mediator is essentially an expert person who is allowed to come in and assist the commissioner in doing the commissioner's reviews. Our concern is that while the mediation concept is a good one, there are no limits on the amount of time the mediator must have in which to make his report to the commissioner or in which time the commissioner must make his or her order.

11:20 a.m.

We would like to see an outside time limit on that, because when you have an open-ended time period you can have what amounts to a de facto denial of the request for information simply because you do not get back to the people. Certainly that will be the case where the information becomes stale because it is being tied up in the red tape and bureaucracy.

There is a slight problem. We refer to it in paragraph 4. I assume that this is one of the technical changes: an inconsistency in the time limit for appeals to the commissioner. It talks about 20 days in one place and 30 days in another. I assume this is something the Ministry of the Attorney General is aware of and will be dealing with as a technical amendment.

There is a technical problem with section 49. The word "report" is in section 49 of the bill. That is an undefined term. We think what is intended there is the word "record" and we suggest that it be changed at this stage.

Let me turn to the second part of our submission, the part on the administrative and general procedures. Let me deal first with sections 24 through 34. In subsection 24(2) is the provision that if there is a defect in the request form, it can be sent back to the information requester. We would like it to be clear that if there is such a defect, the information requester should be notified forthwith. Again, there is an undefined time period that would permit the head of an institution to delay virtually for ever the seeking of a corrected form. A simple word like "forthwith" should be inserted to define the time period in which to inform the applicant of the defect.

Section 25 of the bill deals with interdepartmental competition for who has the record: "Do you have it or do you have it?" We would not like to see the information requester caught in the middle of that kind of bureaucracy and, in our view, the section as drafted creates some confusion. We have some suggestions here for an amendment to subsection 25(2) that would define "a greater interest."

Again, there are time limit problems in subsections 25(1) and (2) and in section 26. We as lawyers are always concerned when we see time limits that are "reasonable in the circumstances." What is reasonable to one person may be unreasonable to somebody else. We would like to see that clarified.

Again on time periods, section 28 creates what we call a stacking problem, where you can have time periods stacked one upon the other and actually stretch the time for a request, in some cases, up to 79 or 80 days. That is because of the 30 days under section 26 within which time the head of the institution has to respond to the information requester. That then can be extended by 20 days if there is a third party to be considered and by another 30 days under subsection 28(7). When you add up all these times you could have 80 days, which is quite lengthy.

On the subject of fees in around section 53, we would like to see the federal practice adopted in this jurisdiction whereby the applicant merely pays \$5 and gets up to five hours of government search time. Beyond that you would look at the various factors for the cost, such as the manual search time, the number of records to be searched and their complexity.

We have a concern with clause 55(c). We will come back to it a little later, but it is on personal information. I believe one of the gentlemen who explained the bill earlier talked about personal information being collected from the individual himself, and in certain circumstances it can be obtained by other methods. We think this is contained in clause 55(c), where personal information can be collected by the commissioner in appropriate circumstances. Again, this is vague language. We are concerned about what rights the information commissioner might have to obtain personal information through the back door.

Let me move to "Exemptions to the Right of Access" at the bottom of page 7 in the third part of our submission. While we agree with the general right of access to information in section 10 of the bill and appreciate the principle enunciated in section 1 of the bill that "necessary exceptions to the right of access should be limited and specific," we do have some concerns with the particular language used in this part of the bill.

To deal first with cabinet records, the bill suggests that cabinet records should in all cases be a mandatory exemption. We would like to see that changed so it is discretionary and follows the federal rule. Subsection 69(3) of the federal act does provide a little different approach to dealing with cabinet records. After all, if, as the Attorney General (Mr. Scott) has said, this is to create a window on government information, there is some point in time when some types of cabinet records should not always be locked up from day one.

It seems to work in the federal jurisdiction. We have pointed out the language that is in the federal act and we would like this committee to consider changing section 12 of Bill 34 and invoking the provisions of subsection 69(3) of the federal act.

On section 13, advice to government, our concern is that if we are talking about a window of information available to the citizenry of this province, we would like advice to government to be public, at least to the extent that it is covered in what we call the internal law of government.

Section 33 of the bill says that internal government procedures--for example, the way the social services department would deal with a welfare application at the provincial level or the way the tax department makes its interpretations and audits taxpayers--are all to be made public under this bill generally.

We would like to see section 33 override section 13 so the government cannot invoke section 13 to say that the internal procedures of government cannot be disclosed. We think that is very important. This is also consistent with the recommendation of the Williams commission.

On section 14, law enforcement, we have some concerns about definition. Again, we think that clauses 14(1)(a) and 14(1)(l) are too broadly defined and are not consistent with the specific types of exceptions that are enunciated in the objectives of this bill. We think they can be deleted because the other clauses in section 14 adequately cover that.

On section 18, economic and other interests, we would like to make it clear that crown corporations are treated in the same way as private sector corporations under section 17 so that the same set of rules that apply to crown corporations competing in the marketplace are applied consistently.

On section 19, solicitor-client privilege, we have a concern about the interfacing of solicitor-client privilege and the disclosure of the internal procedures under section 33. We would be pleased to explain the inconsistencies there.

11:30 a.m.

In section 21 there is obviously a very important exception on personal privacy. There are, however, some confusing areas we would like the committee to consider. For example, the "person" who is referred to in subsection 21(2) could be anybody. We would like to know who that might be. In subsection 21(4) there is some vagueness that we would like clarified.

I will move on to sections 11 and 17 on third party information. We have a balancing act here between the legitimate needs of government to receive information from third parties in order to govern the province properly and the disclosure of information that is sometimes sensitive and could be dangerous economically if disclosed to competitors.

The Attorney General suggests that section 11 will create an obligation on government to disclose information where there are grave safety, environmental and health concerns. In our view, the government has always had that right under the common law. In fact, that common law right seems to have been recognized today by the Attorney General on page 11 of his remarks, where he says that whatever the procedures were before this bill is passed, they will continue to apply. He is really saying we have always had the right and the bill will not abrogate from that right.

We have, therefore, some concerns that section 11 need not be inserted in the bill, but the government appears to want something more than the common law right. They seem to want a compelling obligation on the heads of institutions to disclose information. We want to suggest some changes to section 11, so it will work in a more realistic fashion.

We have two real concerns with section 11, which are set out in the submission under part IV on page 9. The section creates, for the first time, a statutory obligation on the head of an institution to disclose information in certain circumstances. Our first concern is about the rights of third parties that might be affected by that expeditious disclosure of information and our second concern is about the level of the person who is given the right to make that rather draconian disclosure.

Let me deal first with our concern about third party information. We recognize that the government has a legitimate concern where environmental, health and safety problems exist, and that information must go out in those circumstances. Where it is possible, however, we would like to see a safety net for information that has been filed with government in confidence. We want to see some dialogue, where possible, between the government agency affected or the cabinet minister affected and the information filer, where the information is to be disclosed.

Very serious mistakes could be avoided through simple consultation. Once you have opened Pandora's box, you can never get it all back inside. Again, it

is part of a balancing process. We suggest some amendments to section 11 to provide that where third party rights are affected by that immediate disclosure, where it is practicable--and we recognize that it may not be practicable in all circumstances--notice be immediately given to the third party whose information and whose rights are being affected.

We do not think that is an unreasonable process and it could avoid a lot of problems for everybody later. It could, for example, avoid a public scare when a public scare may not be appropriate. We suggest what that notice might contain. The other side of that notice is that we would like the third party affected to have the immediate opportunity to make representations. Obviously, the decision is going to be in the government's hands, but we would like that mechanism put in place.

We would also like the balancing process on the disclosure of information and the government's concerns for safety, etc., to be a balancing provision. We have suggested some wording to that effect in our proposed subsection 11(1), picking up on the language of section 17 where there is a similar balancing provision.

The other concern we have is about who can make these kinds of ex parte unilateral disclosures. Very significant power is being given in section 11, much more than I think people are aware of. We asked earlier that such political responsibility not reside in the head of an institution. When you look at the kinds of institutions covered in schedules 1 and 2, you may have any kind of a lower-level branch director.

In looking at the delegation powers in this bill, we are concerned that whoever exercises discretion under section 11 should be politically accountable. For that reason we would like it clear that in section 11 "head" means the cabinet minister responsible for that institution. To do that we have suggested two amendments, one to the definition of "head," so in section 11 it means a member of the executive council, the other to section 58, the delegation authority, so for the purposes of section 11 that power may not be delegated. We would like there to be political responsibility for that kind of disclosure in all cases.

I would now like to move on to the other part of our concern for third party information and disclosure in section 17. We did have the concern that this was a discretionary provision, but the Attorney General told us this morning that is going to become a mandatory exemption. We are grateful for that change, which brings it into line with the federal act. We believe, however, it would be better if section 17 were redrafted to follow more closely the recommendation of the Williams commission in 1980 that where information contained in a record reveals a trade secret or scientific, technical, commercial or financial information supplied in confidence, it should not be disclosed.

In order to implement more fully the recommendation of the Williams report, we would like to deal with what we call the injury test. That is the test that is applied in order to determine whether the third party will truly be affected. If you take a look at section 17, you will see the test that must be met in order to come within the exemption, or the information whose disclosure could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, etc. That is what I mean by the injury test. As a third party, you have to show that you will be injured in some way if the information is disclosed.

While that may seem to be very simple, when it is applied in a practical way there is a problem about the information that has been filed by third parties. In order for them to demonstrate that they will be injured, they have to bring in economic experts to show that the disclosure of the information will be harmful to them, that it will have an effect on the marketplace, competitive forces and so on. That makes it a very long, drawn-out process and we do not think that is appropriate.

In the case of small businesses, they simply will not have the resources to bring in the economists and other marketing experts to meet the position that the department may put forward. We would like to express our concern about the inability of the business community, both small and large, to deal with meeting the injury test.

11:40 a.m.

We would like to see section 17 come out as a parallel provision to the federal act. We say that for two reasons. First, the federal act has a different set of rules where it affects third parties. Second, many organizations in this province that are filing with the provincial government are also filing with the federal government.

We are often told by our clients, both small and large, that the paper burden is enormous. We would like to see consistency between the two filing regimes. We do not see any reason why it is not possible to have the same injury tests and the same confidentiality tests applied in both federal and Ontario jurisdictions. For that reason, we suggest that section 17 as drafted in the bill be repealed and replaced by subsections 20(1), (5) and (6) of the federal act. That would give us a tested regime and would protect trade secrets in a much better way.

The Williams report dealt specifically with trade secrets. We have suggested some amendments in our federal submission to define "trade secrets" better. It is an undefined term in the common law. We can provide you with that. Basically, we are saying that section 17 creates too much uncertainty. It will lead to a reluctance on the part of the business community to file information in as much detail as government would like, and that does not help anybody. We would like to see it consistent with the federal rules so everybody knows the information is available, consistent and can be protected.

One change we would like to see in subsection 20(5) of the federal act, if the committee would agree to import it into this bill, is where it says information of third parties can be disclosed with the consent of the third party. The federal legislation is flawed in that it does not require written consent. There have been experiences where the head of an institution says, "Yes, you consented to us disclosing it" and the third party says: "No, I did not. We just talked about it on the phone. That is not what we said." We would like to see this as "written consent."

Turning to the last part of the bill on the protection of privacy, for the benefit of the committee we have repeated the principles set out in the Williams report. The principles are openness, individual access, individual participation, collection limitation, use limitation, disclosure limitation, information management and accountability. These are contained in volume 3 of the Williams report. I suggest when this committee goes through part V of Bill 34 they bear these principles in mind because they set the stage for the personal privacy provisions.

In our view, Bill 34 goes a long way to achieving the goals on personal privacy set out in the Williams report, but there are some areas where Bill 34 misses the mark. We want to point these out to the committee today. First, we think there is a simple technical problem of wording in the definition of "personal information," which is defined as "recorded information about an identifiable individual". It is the juxtaposition of the words. The word "recorded" is not a defined term. It would be much simpler to say "'personal information' is information in a record about an identifiable individual." It is a very simple wording change, but there is a definition for "record."

Subsection 36(1) creates the ability to collect information directly from the individual, whom we call the data subject, the individual on whom the information is being collected. The collection problem could be confused with the right given to the commissioner. This is an outside, separate right given to the commissioner in clause 55(c) of the act to authorize virtually any manner of information collection in appropriate circumstances. We do not know what "appropriate circumstances" means. We would like guidelines set out in the act or in the regulations on where that discretion could be exercised by the commissioner.

Subsection 36(2) says that where information is collected on behalf of an institution, notice is to be given to the individual unless the minister responsible for that institution waives the notice requirement. In our view, the waiver of the notice by the minister is contrary to the openness principle and the collection limitation principle. We do not think government agencies should be out there collecting information on individuals without their knowledge, simply because the minister has chosen privately to waive the notice provision.

Subsection 37(2) provides that personal information in an institution's records must be "reasonably accurate and up to date" if it is to be used. This is a very broad definition. We would like to see a better definition, probably in the regulations, in which a time period is prescribed, so when that time period has expired and the information is stale, the information will no longer be used.

In clause 37(3)(a), personal information may be used where it is not reasonably accurate and up to date if "the recipient works for an institution involved in law enforcement." We are very concerned that a law enforcement agency is permitted to be given stale information. If anyone, a peace officer, an investigative officer, should be given information that is reliable and not information that is not reliable. We have concerns about the law enforcement agencies we are talking about. Are we talking about Ontario law enforcement agencies? About Canadian agencies? About international agencies?

We would like there to be some positive obligation on the institution disclosing the information to the law enforcement agency to say that the information it is transmitting may not be accurate. It is not enough simply to transmit information where the institution knows it is not accurate. It has to convey that information to the law enforcement agency so it can apply the appropriate tests. We would like to see a technical change in the second line of clause 38(a), the substitution of "that purpose" for "the purpose."

Section 39 of the bill gives the head of an institution broad discretionary powers to release, or to refuse to release, information. We would like there to be some clarification of that. The head of an institution is frequently busy doing things other than dealing with the access unit in his institution. I understand from the Attorney General that through the

Management Board of Cabinet, access units, or whatever they are going to be called, are being set up within each department and institution.

We have concerns that the head is not going to be fully on top of the access procedures. We have experienced difficulties in the federal regime whose legislation has been in place for two or three years. We are concerned that the head may not properly delegate the authority to the right people in the branch or the institution. Yet the head is immune to damage claims arising out of any errors made in good faith.

It is inappropriate for the head of an institution to have so much discretionary power on the personal information side, when he is protected if he is acting in good faith but makes a mistake, particularly since he does not have the experience. In our view, section 39 should establish what circumstances permit disclosure by a head. Where there is disclosure to the commissioner, it should be mandatory. There should not be discretionary disclosure powers to the head of the institution at all, other than to the individual himself.

11:50 a.m.

The discretionary powers set out in clauses 39(1)(f), (g) and (h) permit the head the discretion to disclose information, "in compelling circumstances affecting the health or safety of an individual," "in compassionate circumstances," and "to a member of the Legislative Assembly who has been authorized by the constituent" for disclosure "or, where the constituent is incapacitated, has been authorized by the next of kin or legal representative of the constituent."

What we have here is a circumstance where information in government data banks and records may be disclosed in compassionate and similar circumstances. We are concerned that information filed with the government by individuals may not be appropriately disclosed in these circumstances, because of the inexperience of the head of the institution and the delicacy with which some of this information is filed.

We would like to see that discretion exercised by the Information and Privacy Commissioner or someone in the commissioner's office. We have very real concerns about the level of sophistication of the head of an institution dealing with information that has been filed confidentially with the government by individuals. We would like that power kicked up to the commissioner's office, where they can develop the expertise and put appropriate policies in place to apply across the board to the government of Ontario.

Last, we would like to see added to the list in section 39 the ability to disclose information to an individual's solicitor on the written authorization of the individual.

There are some language problems in section 43 about the right of an individual to access "any personal information about the individual contained in a data bank under the control of an institution." "Data bank" is not very well defined; it is a little too loose. "Under the control of" is unclear. We would like to see a tighter definition of "under the control of" contained in section 43, or clarification in section 40.

Clause 44(3)(b) does throw up a possible roadblock to deny access to the individual if he is not able to attend and examine the information in person.

It could be solved simply by changing the words to read, "if the individual is unable to attend in person or so requests, provide the individual with a copy thereof"--a simple mechanical change that would make the access more practical for individuals.

Clause 45(f) exempts research and statistical records from disclosure. We do not know why that kind of information should be exempt from a general right of access.

We have a few last points, general concerns about the concepts of the bill.

Government institutions have no obligation to ensure that the information they have in their data banks is up to date. The principle of information management enunciated in the report of the Williams commission suggests that those people who do maintain records and keep data have a positive duty to maintain its accuracy on an ongoing basis. It is particularly of concern in the law-enforcement-agency environment.

We have concerns about the level of expertise that will be developed under this freedom-of-information régime. We are concerned about the limited powers given to the commissioner in terms of the ability to audit the process and to follow up on activities that have been delegated within the institutions. We would like to see the accountability principle as set out by the Williams report followed, and the commissioner given more power in the active enforcement and implementation of the bill. The commissioner should play an active role. He is not merely an ombudsman. He becomes a watchdog with respect to all government data.

It is not clear how this committee will be able to review the performance of this bill in a few years, as required by section 61, if no central agency has been monitoring its implementation and activity. Federally, the commissioners are involved in that audit procedure and in monitoring procedure. We would like to see the commissioner's role be one of not merely reacting to problems but of actually reviewing the process so that it is kept within the objectives set out in the bill.

The last point we make is that of computer matching. This is not addressed in the bill, nor is it addressed as such in the federal legislation, although we have raised this concern there as well. There are very real concerns on the part of citizens in Ontario that information filed with one government agency will be kept within the confines of that agency. While there are provincial statutes that do not permit the transmittal of information from one administrative or taxing regime, for example, to another area, the concern about internal computer matching in this province is very great.

We would like to see something in this bill that will reinforce the roles among the various governments where there are confidential reasons for keeping information in separate compartments. We are seeing this in the United States. It is far too easy for government agencies today to have their computers tap into six other government computers, or perhaps they already are sharing the same computer, and have them match by social insurance number or the Ontario health insurance plan number or whatever it might be. We have real concerns there.

There is one other point that I skipped over earlier. It was mentioned in the review of the outline of the bill that in two years' time, this bill will override the confidentiality provisions of all the other acts of the

province unless those acts say that they override. Obviously, the two-year period is there to allow the Legislature to amend those acts. We would like to see that section--it is section 61 or 62--clarify the situation, that until that two-year period has matured, the other acts prevail. We see a gap that we think should be plugged.

That is a very fast overview of our submission. We would be pleased to answer questions on our comments, on the practice in the federal jurisdiction to the extent we can, or to make any other clarifications that people might ask for.

Mr. O'Connor: I would like to thank and compliment the Canadian Bar Association--Ontario for its comprehensive, well-researched and well-presented brief to us today. Not only have you dealt with a lot of the issues in a very comprehensive way, as I have indicated, but you went so far as to provide suggested amendments to the sections to give effect to your recommendations. That is helpful and has been helpful to me in particular, as I am on the justice committee, with respect to several large pieces of legislation that we have been dealing with there, although we have not always followed your specific recommendations, have we, Ms. Gigantes?

I also compliment you on the general thrust of your recommendations today. As Mr. Langford pointed out, you represent a very broad cross-section of lawyers and interests. I, for one, can agree with much of the thrust of what you have presented to us, particularly in the appeals area: the necessity for appeals to the courts, the necessity to tighten up some of the exemption sections and so forth.

12 noon

However, there is one section upon which you have not touched, and I ask for your comments in this regard. This concerns the listing of the agencies, boards and commissions. The government has chosen to proceed by naming those ABCs that are to be included in the act. I argue, as I did on second reading, and it is argued that the preferable route to follow would be the reverse; that is, to name those ABCs that are not to be included, thus including all that are not named. The effect of that would be that the onus then would be on the government to make its case as to why a board should not be included, rather than the reverse. They presented us with the list this morning. I have not had time to go through it; I do not suppose anyone has. Therefore, many boards and commissions that we may not come across or think of ourselves are likely to be left off that list.

What would be your comment on that procedure? Would the exclusionary route not be safer to follow than the inclusionary route?

Ms. Bonner: Mr. O'Connor, if I may respond to that, with the myriad of boards and possible crown corporations that potentially could be covered by the act, in the interests of certainty we would like to see a schedule specifically naming those that are covered, otherwise one would end up in a situation where municipal boards, hospitals and institutions may or may not be certain they are covered. Schedules of those crown corporations subject to the act seem to have worked quite well in the federal act.

Mr. O'Connor: I would argue equally that one would be quite certain as to which were not included because they would be on the list. Everything else that the government may create by way of an ABC would be included and, from the individual or public point of view, that clearly would be the

preferable way to go. However, I wanted to know the general attitude of the CBAO on it.

Mr. Jacobs: To echo Ms. Bonner's concern that we throw the net out so wide, we would rather come at it the other way and see how it works. While the heads of institutions and the provincial government could perhaps have their policies come down to them through Management Board, I have difficulty in seeing how hospitals, universities, municipalities, all the agencies that might be covered, could cope with this.

The Attorney General said on another occasion that he would like to see voluntary compliance. There is a flaw in the definition of institution in the bill. The definition of institution says any corporation designated in the regulations. We think the intention there is "crown" corporation. We do not know that. That is one of the amendments that is in another part of the submission I did not touch on. We would like to see an approach from the ground up instead of the ceiling down.

Mr. Chairman: To add to that, it is fairly obvious that at some point the committee is going to want to go into definitions of institutions, which is covered and which not. I would like to see, for example, the list of agencies that are exempted, as well as those that are included. A quick run through would indicate to me there are a couple of major information sources that are not on the list. We have to determine whether they are there by some other vehicle or that if they are not included in this schedule they are not covered by the act. We have to pursue that more. That may be a lengthy exercise.

Mr. O'Connor: It would not have to be if the route followed were as I have suggested. They would be included automatically unless named on the list.

Mr. Chairman: That is conceivable but nothing in this life is ever that simple, particularly when there are lawyers involved.

Mr. Treleaven: Nasty.

Mr. Warner: Just wanted to make sure you are awake, Mr. Treleaven.

Mr. Chairman: I just noticed. Why did you wake him up?

Mr. Treleaven: Mr. Chairman, this morning I am curious as to whether we have a group of junior solicitors in front of us or if they are being delicate because of the Attorney General (Mr. Scott) leaving off QCs.

Mr. Chairman: Thank you.

Ms. Gigantes: I would like to thank the bar association for the excellence of its brief. It is going to be very helpful to us throughout our proceedings.

I have two questions that arise from the brief. In several areas you suggested that the authority in the parts of the bill that now allow discretion by heads be transferred, as it were, to the commissioner or commissioners which would increase the work load of the operation of that office or offices. You also suggested the role of the commissioner should be one with a mandate to monitor, to audit the operations for legislation. I have this image of an overworked person or persons involved in all these areas of

decision, plus the oversight mandate. I wonder how that is going to operate very effectively.

I also have a question in my mind, looking at the bill as it exists now. The commissioner can have only an assistant commissioner, and that is the only person to whom authority conferred on the commissioner can be delegated. Will one or two persons be capable physically, emotionally, psychologically of carrying out that burden of work?

Mr. Jacobs: The commissioner's office will have a full staff. Again, looking at the federal model, each of the two commissioners' offices has a research staff and a legal support staff and they keep the system running. Remember, they also have the appeal procedures there. It could be that the part of the staff that is currently looking after the implementation process in Management Board might move over to the commissioner's office as an ongoing review mechanism on how the implementation is going. Instead of reporting to the head of Management Board, it would be reporting to the commissioner, who would report to the Legislature.

I do not think we contemplate the commissioner or the commissioner and his or her assistant taking on this role just between the two of them. The bill provides for the support services there. The problem is in the absence of gathering that expertise in the office of the commissioner, it is not gathered anywhere. The disclosure of government information is so critical, and the proper procedures and the changes in those procedures and the changes in the regulations that may be necessary should be audited by somebody independent of the operating departments. The commissioner is a logical place to do that.

It is workable federally. There are annual reports filed federally on how the appeal situation is going, how the administrative procedures are going, how the access units are working and so on.

Ms. Gigantes: We are sent an awful lot of detail in those reports in terms of the types of appeals that are going on--

Ms. Bonner: One of the problems in the annual reports of the Information Commissioner of Canada is that because of the nature of the information they are dealing with, they cannot go into a great deal of detail in describing the substance of the appeal they have dealt with during the year precisely because there is some dispute about its confidentiality.

Ms. Gigantes: I understand that.

Ms. Bonner: I understand your concern about the assistant commissioners. As I am sure you are aware, Ms. Hansen found it necessary last year to appoint two assistant commissioners to assist her in conducting her job. Again, it was only after two years' experience that she realized she had that need.

Ms. Gigantes: Here we are spelling out legislatively that there will be only two people, as the bill now stands, who have any of the commissioner's authority. That seems to be an enormous work load. Are you concerned about having more fully authorized people involved?

Mr. Jacobs: I do not think so. We want the system to work. If you feel you want to grant more flexibility, then by all means; we would not oppose the appointment of additional assistant commissioners and whatever other support staff requirements should be in the bill. We want the system to

work. We want it to be flexible enough that if there are problems that can be fixed without necessarily having to change the statute every time--and you can do that through regulations, procedures and so on--but what you need--

12:10 p.m.

Ms. Gigantes: I am completely in agreement with your point about setting up a monitoring process from the outset, because it is kind of late to do it afterwards.

The second area I would like to ask a question about is section 17, the protection for third parties in terms of disclosure of commercial information in particular. I was interested in the forum that was recently held at the federal level concerning the federal legislation, where Jed Baldwin--I guess we could call him the father of freedom of information at the federal level, in political terms--suggested that he is not happy with the current federal legislation and that he feels the onus of proof should fall on a third party that is seeking an exemption. In other words, having watched the operation of the federal legislation, he is saying that precisely the kind of proposal that is in this bill would suit him better. He thinks there now is too much power given to third parties who are looking for an exemption.

Mr. Jacobs: We do not agree. Under the federal act there is no onus, as such, on anybody.

Ms. Gigantes: That is right.

Mr. Jacobs: We think that if there is an onus at all, it should be on the part of the institution not to disclose. Our concern is really twofold. First, the very essence of a company's business is its information, its proprietary secrets, its trade secrets, its customer lists, its chemical formulations and so on, much of which is filed with government under various regulatory regimes.

There is a procedure in the bill at this stage where, if there is an issue about whether third-party information is or is not to be disclosed, there is an appeal possible on that point to the commissioner. The matter could be aired there. The problem is that on the one hand you want to limit business so that only the things that really affect it will not be disclosed; you do not want it to have a shotgun right to have everything locked up.

On the other hand, you want to make sure that the proprietary assets, the information assets of businesses, are protected from disclosure so as not to adversely affect their competitive positions. You also want to make sure that businesses will continue to file the detailed information that government needs to carry out its administrative and regulatory obligations. There is a balance that has to be struck.

Ms. Gigantes: It seems to me you have suggested a rather tilted balance. You have also suggested that the disclosure of commercial information be associated with matters of public health, public safety and protection of the environment. Surely you will accede that there are a lot of other kinds of information that the public perhaps should have a right to besides those items. There are a lot of financial transactions which will be of interest, I am sure, to journalists and media watchers, listeners and readers--the public, in fact.

Mr. Langford: As a layman in relation to legislation, I would like

to observe a statistic that I find fascinating. The Americans have been in the business longer than we have with broadly the same kind of ideas. The biggest users by far are commercial people. The public that wants the information wants it for commercial advantage: "I want to find out what my competitor has told the government because I might be able to use that information in my business."

Ms. Gigantes: Can you provide us with documentation of that? I am of the opinion, according to what I heard at the conference I just referred to, that the exact opposite is true, that there are very few requests made concerning commercial information.

Ms. Bonner: If you are talking about federal legislation, it is impossible to determine the identity of the requester under the federal act. I know the Treasury Board attempted to do it and did a split, but in many cases--

Ms. Gigantes: What Mr. Langford was citing was information from the American setting.

Ms. Bonner: Yes. We can provide documentation--

Mr. Langford: We can provide the statistics.

Ms. Gigantes: I would be delighted to see that because I have been told the exact opposite.

Mr. Langford: You can divide it into political use and commercial use; very little is straight curiosity. Political use includes a ratepayer association trying to find out what government is intending for their neighbourhood. Defining that very broadly, the political use is quite a lot. A lot of it is newspapers engaged in investigative journalism.

When we think of the public, we should always remember that in this particular issue we are talking about the commercial thing. I am a corporate lawyer, and I specialize in high-tech companies, which very often have ideas that cannot be patented. We are dealing with one this week with the provincial government. We are coming along and asking for a little bit of short-term economic health. We are arguing about all the employment that would be created and so on. We are telling them the processes that cannot be patented, and we are telling them in confidence. If somebody else knew we were talking to them and could obtain the information so that it could make use of it, that would be terribly unfair. That is the kind of issue they are trying to address here.

Ms. Gigantes: Yes, but you do not need protection there on the grounds that the information is related to public health, safety or protection of the environment. Those are very narrow grounds when you are talking about information that businesses file with government.

Mr. Jacobs: Maybe I could ask you to step back for a minute. We are dealing with two different sections. Section 11, where there is no information request, is the one that deals with environmental health and safety concerns. That is not an information request situation.

Ms. Gigantes: I am referring to your brief. You are suggesting here that we should be limiting the kinds of information available from business filings with government to those that deal with public health, safety and protection of the environment. I am looking at your comments on section 17.

Mr. Jacobs: That is the provision in the federal act on the override. The override section in the federal act deals with those areas. That is the closest point the federal act comes to the proposed section 11.

Ms. Gigantes: You say, "Moreover, in the federal act the interests in disclosure are specifically circumscribed to be the interests that 'relate to public health, public safety or protection of the environment.'"

Mr. Jacobs: That is the section says that even though the information is proprietary and should not be disclosed under section 20, there are certain circumstances where the public interest overrides that, such as these areas, and therefore--

Ms. Gigantes: Okay. I see what you were getting at.

Mr. Jacobs: You are really into the section 11 parallel in this bill.

Ms. Gigantes: Yes.

Mr. Jacobs: We do not disagree with the government's thrust in section 11. All we are saying is that where you have environmental health and safety concerns, if you can notify the third parties and give them an opportunity to put forward their case before you disclose that kind of information, please do so.

Ms. Gigantes: And mediate.

Mr. Jacobs: Right.

Mr. Chairman: If there are no other questions, we stand recessed until 2 p.m.

The committee recessed at 12:16 p.m.

STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES, BOARDS AND COMMISSIONS
FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

TUESDAY, MARCH 25, 1986

Afternoon Sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES, BOARDS AND COMMISSIONS

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Substitution:

Gigantes, E. (Ottawa Centre NDP) for Mr. Martel

Clerk: Forsyth, S.

Assistant Clerk: Mellor, L.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

Witnesses:

From the Ontario Association of Archivists:

DeLottinville, P., Secretary

Averill, H., Treasurer

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS
AND AGENCIES, BOARDS AND COMMISSIONS

Tuesday, March 25, 1986

The committee resumed at 2:09 p.m. in room 228.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, 1985
(continued)

Resuming consideration of Bill 34, An Act to provide for Freedom of Information and Protection of Individual Privacy.

Mr. Chairman: The first group this afternoon is the Ontario Association of Archivists. Peter DeLottinville, the secretary of the association, and Harold Averill, the treasurer, are here. Would you gentlemen come up and sit at the front?

The process we use here is a relatively straightforward one. It is an opportunity for you to present your point of view to the committee on the bill and a simple opportunity for members of the committee to ask you some questions and chat about it for a while. If you would like to, just proceed. This is exhibit 59.

ONTARIO ASSOCIATION OF ARCHIVISTS

Mr. DeLottinville: We thank the committee for the opportunity to present our views here this afternoon. I suppose you are wondering what the connection is between archives and freedom of information. It is not particularly the first association that comes to mind. As an organization, we believe the bill has certain implications for the way we do our jobs as well as for the researchers who use archives in the province.

The introduction of this bill is something that has been looked forward to by a lot of people in Ontario and is something that is welcomed by all residents. The principle that government information is public information should be fundamental to the operation of Ontario's public affairs and limited only to specific exemptions to ensure the good government of the province, the safety of its residents and the privacy of individuals.

The acceptance of such a basic principle, however, does not eliminate the problem of reaching a balance between the conflicting forces of the public's right to know and an individual's right to privacy. In this bill, the basic question has been addressed and, in many cases, seems to present a fair and equitable law to resolve the dilemma. It appears, however, that in its present form this bill may have some long-term implications not foreseen by its authors.

As a provincial association representing around 400 people who work in archival institutions across the province, within both the provincial and federal governments and in the private sector, the Ontario Association of Archivists views the principle of freedom of information from a slightly different perspective. In our daily work, we attempt to ensure that the preservation of historic records that contain vital information takes place to encourage an understanding of the historic process that has created our contemporary society.

A complete written record of past actions and events permits a more accurate interpretation of the forces that have shaped our society. The proper regulation of contemporary records is also recognized as an important part of the government's responsibility to provide access to information, not only for contemporary purposes but also for the use of future generations.

The association hopes that this committee, in studying this bill, will keep in mind the entire life cycle of records from their creation through their protection and storage to their final disposition by authorized destruction or by transferring them to the archives for purposes of historical research. It is important to keep in proper perspective the effects of this bill upon the accessibility of historical records currently in care of the government as well as the historic importance of records now being created.

Regarding current government records, our association supports the recommendations made to this committee by the Association of Record Managers and Administrators. Their brief, which I believe will be formally presented later on this week, makes a number of sound proposals to improve the current record-keeping practices of the government.

Our own comments on this bill relate mainly to the role of the Archives of Ontario under the new freedom of information legislation. It is our belief that archives must play an important role in the control and custody of records identified as being of historic significance. The archives should be given the authority to ensure the preservation of these records, to enforce the rights of individual privacy granted under the proposed bill and to decide the types of records exempted by the general access provisions. In order to achieve this, the government should provide adequate resources to the archives to carry out these responsibilities under the new act.

The association supports the position that the legislation should cover a wide range of government agencies, boards, commissions and corporations. We feel that the proposal that this legislation should cover organizations that receive at least half of their funding from the provincial government is a good one. It does not believe, however, that all records currently held by the Archives of Ontario should be included in the provisions of this bill. Records currently held by the archives include both government records and private papers donated by either private citizens or corporate bodies.

Because these private archives are not government records, our association believes such private records and papers should be specifically excluded from this bill. Such an exemption has precedence in the federal Access to Information Act under section 68c, which excludes private materials placed in the public archives, the national libraries and the national museums of Canada. The protection of personal information within such private collections is still an important matter, but we feel that it is a matter that is best dealt with in case-by-case negotiations between the donors of the papers and the archivists in charge of the collections.

An exemption should also be made for those government records currently in the custody of the archives that are open to the public. The exemptions outlined in sections 12 to 22 of the bill, as well as the provisions dealing with the use and disclosure of personal information, should not apply to those records that have been used in the past by historians and others for the purpose of historical research. To retroactively impose access restrictions on information now in the public domain would be an action contrary to the purpose of this bill.

Our association hopes the committee will spend some time in defining the concepts of private papers and government records as they relate to ministers of the crown. As members of the Legislature, ministers have responsibilities towards their constituents and as members of their political parties. In the British tradition, these functions and the records they generate are considered private. On the public side, ministers also act on behalf of their ministries and any of the boards or commissions under their control. Records relating to these activities should be considered public records. They should be under the control of the government's records management system and included in the scope of this bill.

The exemptions to the general right of access proposed in this bill and outlined in sections 12 to 22 are both wide-ranging and complex. The association supports the bill's attempt to make these exemptions limited and specific, but does not feel that in their present form these exemptions will provide a satisfactory method to gain access to information of historical value.

If exemptions are to be limited and specific in terms of the types of documents they withhold from the public, such exemptions should also be limited in the period of time that they are enforced. Truly limited exemptions would not remain in force in perpetuity, but would last only as long as it is necessary to fulfil their intended purpose. This principle of limited duration is used for the exemptions for cabinet records and advice to government in sections 12 and 13, which remain operative for a period of only 20 years. We would hope that some comparable limits would be established for the other types of exemptions.

Our association, from our own work, realizes that it is not an easy matter to fix time limits on exemptions for matters covered in sections 14 to 22, but a failure to do so will seriously impede the effectiveness of this bill as it relates to the historic records of the government. The introduction of time limits on these exemptions must not be interpreted as a method of withholding documents from the public for a specified period of time.

2:20 p.m.

There has been some reluctance on the part of archivists who suggest maximum time limits for exemptions out of the fear that those who wish to circumvent the intention of this bill would use such limits as the minimum length of time such documents would be restricted. We would hope that the committee would prevent such a circumvention of this bill's purpose by rewording the sections describing the exempt classes of records to emphasize that exemptions apply to current matters and to individuals still living.

Specifically, we would suggest that the exemption for law enforcement not pertain to records over 75 years old, that exemptions in sections 15 and 16 dealing with relationships with other governments and defence not pertain to records over 50 years old and that executive council approval for disclosure under these exemptions be required only for documents less than 20 years old. Sections 17 and 18, dealing with third-party information and economic interest, should not apply to records over 30 years old. Section 19 on solicitor-client privilege should apply only to documents less than 50 years old where the government is the client.

Section 20 on danger to safety and section 21 on personal privacy should remain in effect only during the lifetime of the individual or, when the death of the individual cannot be established, 100 years after the birth of the

individual. It is only proper that sections 20 and 21 relating to personal privacy should enjoy the longest protection from public access. A democratic government that believes in the right of access to information should be willing to be the first to undergo historical inquiry.

The association would also like the committee to expand those provisions of the bill that allow the head of an institution to disclose information to the public where the public interest outweighs the general interest of the government and third parties as outlined in subsections 18(3) and 17(2). If the committee is unable to establish exact time limits on sections 14 to 21, at the very least we would hope it would allow disclosure of exempted records in the public interest. Public interest should be defined to include disclosure of records to the Archives of Ontario for purposes of historical research.

In addition, the Archives of Ontario, notwithstanding the exemptions in sections 12 to 22, should be granted authority to examine all records in the custody of the government to determine their historical significance and to schedule these records for the eventual transfer to the archives once they are no longer required for operational purposes.

The collection and retention of personal information is a government function that also concerns the archival community. The association is pleased to see the importance of this type of information for historical research recognized by the inclusion of the Archives of Ontario under section 39. It is unclear, however, whether the archives would have sufficient authority under subsection 37(4) on the disposal of personal information to make effective use of its role. It is hoped that in the directives and guidelines to accompany this section of the bill, the Archives of Ontario is given adequate authority to examine personal information in order to select and preserve records of historic value.

The association would also suggest that the section on data banks be revised to exclude personal information under the control of the Archives of Ontario. Such an exemption has precedence in the federal privacy act in subsection 10(2). The rationale for this exclusion is twofold. It would not require the Archives of Ontario to list in the data bank index all its records that contain personal information. One of the roles of the archives of Ontario right now is to provide very detailed lists for all the records under its control.

In effect, the index for the archives would be a duplication of similar data banks controlled by institutions containing current records. It would after a while be almost a mirror effect. As data banks are transferred from the custody of ministries to the archives, the same sort of information would have to be recorded once for the ministries and again for that part of the data bank that is older and in the archives.

As well, if the records under the control of the archives are classified as data banks, the right of correction given in subsection 43(2) would apply to archival records. Since the purpose of preserving records is to maintain the integrity of the evidence they contain, a right to correct the information 50 or 60 years after its creation would undermine its historic validity.

The access procedure and rights of appeal in the bill are designed for citizens seeking information relating to their current affairs and interests and as such do not entirely suit the needs of those using government records for historical purposes. In part, this results from the method of historical

inquiry which requires access to a large number of documents ranging over a long period of time and originating from several government departments. It is hoped that our suggestions on the time limits for exemptions will rectify some of this problem. The association objects, however, to the limitation of the right to appeal for exempted classes of records contained in section 46. All discretionary decisions to refuse to disclose records under exemptions 13 to 22 made by the head of an institution should be appealable to the commissioner. Failure to revise section 46, we feel, would fatally cripple the public's right to know.

These changes proposed by our association to this committee are not made in an effort to exempt ourselves and historians from the responsibility that must accompany a freedom of information bill. Individual rights must not be violated by the common right to government information. However, in the historical perspective, we argue that the pendulum must swing from the right of privacy towards the public's right to know.

The writing of history using a complete archival record is the best defence against the distortion and prejudice that can interfere with a contemporary society's understanding of its past. A good freedom of information law would inevitably eliminate those limited restrictions that this committee would impose upon government records. Archives elsewhere have been described as the memory of a society. The association hopes that the passage of this revised bill will keep that memory sharp and clear.

That, as you can see, ends the official part of our submissions, but we will be willing to discuss any of these matters further.

Ms. Gigantes: I am fascinated by your brief, and thank you very much. It gets us into the whole question of how long you have to wait before you provide access. I would appreciate a bit more detail. I can understand the 100 years you suggest after the birth of an individual whose death cannot be established in terms of personal privacy. However, on the other matters you referred to in that section, can you give us some explanation of why you have picked the numbers you have?

Mr. DeLottinville: I will be the first to admit that these figures we suggest are guidelines or general ones. As I mentioned, this is a fairly controversial subject among people who have dealt with other access to information bills, particularly people who work at the Public Archives of Canada in Ottawa. The problem is that whenever you establish a deadline, people always come up with a worst-case scenario: "What would happen if?" That tends to push back that sort of maximum deadline, the last document you would want restricted until you could release it.

What we were trying to do was to get an average where, if there were problems, say, dealing with personal privacy, we feel the provisions of the bill dealing with personal privacy would cover that.

Ms. Gigantes: Yes.

Mr. DeLottinville: For other cases, we were trying to determine what would be a suitable amount.

Ms. Gigantes: Can you think of a case, for example, where law enforcement information would have to be kept for 75 years before it would be disclosed?

Mr. DeLottinville: I know of a case under the federal legislation where a historian was asking for information on a particular event and was refused records that were almost 75 years old, the reason being that the information was given by an informant at that particular time and that informant was still alive. The police authorities did not want other people within certain organizations to know who the informant was.

Ms. Gigantes: Seventy-five years later. How old was the informant when he gave that information?

Mr. DeLottinville: I am not very sure.

Ms. Gigantes: Do you take information from 10-year-olds?

Mr. DeLottinville: Associations and people who use archives would certainly like to see a lot of these deadlines pushed up.

Ms. Gigantes: In a case such as that, would the provisions of the bill that is now before us inhibit access to information on the grounds of personal safety? Was that the question, or was it a question of personal safety or reputation?

Mr. DeLottinville: I do not know if it was really a question of personal safety after so long a passage of time. I think it had more to do with reputation as well as the law enforcement tradition of protecting the people who supply information.

Ms. Gigantes: It is a very strong tradition, I know, but I wonder whether we should really start from that point when we are looking at questions of this nature.

Mr. DeLottinville: The problem in an archival sense is that once the Legislature adopts a freedom of information act and establishes certain exemptions, we would like to know when those exemptions would come off. If there is no cutoff point, that would mean the archivists who inherit these records would have to screen every government record created to see whether they fall within certain exemptions, whether they were created 10, 50, 60 or 70 years ago.

2:30 p.m.

What we would hope this committee would be able to do would be to provide archives with a mechanism to declare open those records that are no longer contemporary and have an archival or historical information value only. Under the old system it used to be a 30-year rule, which was quite a handy one; records older than 30 years could be made public. Once this bill is adopted, that goes out the window. I think the federal experience has been that it is very time-consuming to declassify all that material simply because historians when they are doing a research topic ask for a very large amount of documentation. That could be extremely costly for the archives.

Ms. Gigantes: On the specific question of government records, can you see a strong argument from your experience or from the experience of other associations for the retention of government cabinet documents for 20 years?

Mr. DeLottinville: In terms of restriction to the cabinet material for 20 years?

Ms. Gigantes: Yes.

Mr. DeLottinville: I think there are similar provisions in the federal legislation.

Ms. Gigantes: That was not what I asked, though. Can you see an argument in favour of that?

Mr. DeLottinville: Archivists are always torn between two groups of people. One group is the people who do research at archives, who are always interested in getting more information for their research topics. The other people that archivists deal with are the donors of information, whether that be a government department or agency or an individual. In the case of private records, for example, the archivists have to sort of moderate between those two tensions and provide donors of historic records or records that will be historic with protection in terms of personal privacy, invasion of third-party information and things like that; they try to establish that balancing act between those two.

Ms. Gigantes: What you are saying is if you make the limit too low, people will not give you their papers.

Mr. DeLottinville: Yes, basically that is it. If the level of access is too low and things that are turned over to the archives are immediately made public, we have found in the past that some organizations will hang onto their records for a lot longer than they reasonably should.

The danger is that archives is set up particularly to preserve those records, where a lot of agencies or government departments are not. Rather than being sent to an archival institution when they should be, they are stored in a warehouse somewhere for 20 or 30 years. The information that can be lost during that time is sometimes quite grave. If the storage space is not adequate, or if there is a flood or a fire or whatever, that can create difficulties.

From an archival point of view, we prefer to have sort of a continual flow of historic information from the creator to an archives. It should be a steady process rather than waiting for a long period of time before it comes to an archives.

Ms. Gigantes: Have you thought of any way around this problem?

Mr. DeLottinville: No. That is why I say it is a matter of discussion for us as well.

We were hoping that this committee would be able to come up with something, because we see that as a potential problem that with the passage of this bill, will not appear in the first five or six years; however, down the road, as more information comes to an archives and there are more reasons to make exemptions, that puts the burden of clearing those records on the archival institutions.

Ms. Gigantes: Remind me now old the interview with Erik Nielsen was when it was rediscovered. Was it 25 years?

Mr. DeLottinville: I think it was sometime in 1960s.

Mr. Averill: It was 1963.

Mr. DeLottinville: When we talk about access, people always raise things that have been controversial. I think that when you deal with private records and public records, you have to make a distinction.

The Neilsen tape was a private record made by a journalist for his own work on books that he was writing. It was a private interview; it was not a government record. It is housed in the Public Archives of Canada as a private record. The details for access to that tape were worked out long ago. There might have been some problem in terms of communicating what exactly those access restrictions were.

With government records, however, there is a slightly different case in that the freedom of information bill is based on the premise that people have a legitimate right to look at government records. If there are going to be limitations, they have to be specific and limited. What we are saying is that as a corollary to that there has to be a time limit as well; these exemptions cannot just be black holes where information goes in and never comes out. We had hoped this committee would be able to resolve that.

Mr. Chairman: I have a couple of questions for you.

We heard some testimony this morning from the Canadian Bar Association--Ontario about what they called information management, and it occurs to me that we have buildings full of information all over the place. What kind of problems are created for you when a freedom of information act is passed and opens up a lot of information, just in terms of retrieving the information?

Mr. DeLottinville: Archivists have always argued that archives are underfunded and that we have to make do with the government record systems that were created when that information was originally collected. If there are problems for departments retrieving that information while they are using the records, it is not going to any better once it is transferred to the archives.

The archives does attempt to make more detailed finding aids of records. However, now we are dealing with government records that are creating such a bulk that it is clearly impossible for archivists to do a retrospective fixing up of the system if there are problems with the system to begin with. That is why we think some of the proposals made by the Association of Record Managers and Administrators would help our job as well, because they argue for certain improvements in the record management practices of the government of Ontario. If those were put in place, the historically significant material of government records, which is only about five per cent of the total bulk, would be quite clearly identified fairly early on in the lifetime of the records. That could at least track towards the archives, whereas the rest of it could be held for a particular period of time and then destroyed.

Mr. Chairman: The other thing I am interested in is that, for example, at the Centers for Disease Control in Atlanta they told us that one of their solutions was to begin to use microfilm rather extensively just in terms of bulk information storage and retrieval. I want to know how practical it is to provide broader access to the general public to things like archives.

If it is restricted and we are talking the odd historian wandering in and being given access to files or the occasional journalist doing a background story or something like that, it seems reasonably manageable. However, if we establish as we are doing under this bill that there is a public right to know, and literally anyone can make a request for information that might be quite voluminous and might not be kept in the most modern, up-to-date form, it strikes me that we may have ourselves a bit of a problem there.

Mr. DeLottinville: The use of microfilm for government records and other things has been going on for a good 40 years or so, and it has been an effective tool in reducing the bulk of material you have to store. We use it quite a bit throughout the province. However, it does not really help you in retrieving information. It is a bit like a computer: if it is garbage in--if the microfilm records are in a bad state--it is garbage out. If people want to retrieve information, whether it is on microfilm, whether it is original or whether it is in a computer, you are going to have the same problems.

To microfilm records in itself does not create the problem. The problem is the way the records are arranged before they are microfilmed; that provides the difficulty of gaining access. If somebody wanted particular documents that are contained on a reel of restricted microfilm, it is quite easy to make photocopies from a microfilm or simply to duplicate the microfilm. The cost of duplicating microfilm is not all that expensive.

Mr. Chairman: Is this a practical thing that we are proposing here? Can you handle it? Is there a demand that you are aware of for people to use this type of legislation to get information? Is it going to be used on a large scale in archives?

2:40 p.m.

Mr. DeLottinville: The experience at the Public Archives of Canada, which is where I work and I have a bit more information about that, has been that the freedom of information provisions under the federal situation are used more by the people you described earlier, by journalists or by people who want information that relates to themselves. The problem is that for historians, the people who use archives, it is too cumbersome a tool to use. You have to be very specific about the types of documents you want. You have to know which department has control of them. The nature of historical research is that you want a broad range of documents, and to go officially through the access to information legislation is very cumbersome.

What has happened at the Public Archives of Canada is there is sort of a parallel informal right to access. Historians who want to use information that is in the archives and is covered under certain sections of the bill go through an informal procedure where some of the guidelines in terms of deadlines do not apply. Thus, the archives can perhaps clear a lot of records without going through the formal procedure of filing a submission for access to information, replying in 30 days and all those things.

Mr. Chairman: The people at the Centers for Disease Control said, I believe, they had something like 105,000 requests for information which they handle outside of any freedom of information or protection of privacy law; they just give out information, usually of a rather general nature. I think they also said they get about 600 to 700 requests a year under the Freedom of Information Act whereby a formal request is made and decisions are made as to how much information can be given and in what form. Are you anticipating that you would get a similar split, that the vast majority of the requests would be for information that would have been given anyway in normal circumstances?

Mr. DeLottinville: If the revised bill includes some of the things we have stated, and if restrictions are not imposed retroactively on records that are now publicly available, it probably will be the case that most historians will be able to go through an informal procedure rather than a formal procedure.

Mr. Chairman: I guess what we are attempting to do here is to make sure we do not do anything that stops the current information flow but provide a mechanism that sorts out and establishes that the public has a right to know in certain other areas. Therefore, if there were something up for argument, you would have a law and sets of regulations and all of that to use as guidelines on how you would give it out.

Is it a practical problem? One of the things we have seen in other jurisdictions is that no one thought about the practical side of all of this when the laws were passed; so people who were assigned a given task were suddenly told, "You now also have to dig out this information because of a new freedom of information law." It had an effect on budgets later on. Staff who were hired to do one job were pulled off that job and put on to another one. Are you anticipating practical problems like that?

Mr. DeLottinville: There would certainly be practical problems, the way this legislation would be introduced, because I believe that once it is passed, it will apply to all the records of the government of Ontario. In the federal case, they tried to do a slightly phased-in approach over two or three years for the records that would be appealable under the law; it was the first five years or something, then the first 20 years and then after two years, it was all the records.

It is a particular problem for archives because our collections date from the 18th century to the present. Therefore, for people suddenly to have the right under legislation to make a formal request could create problems. On the other hand, the whole purpose of archives is to provide information to researchers. We are set up to deal with most requests, but we would fear that if the bill were passed in its present form it might create problems for us that originally were not intended to occur.

Mr. Chairman: One of the not so little things I struggle with a bit is that on occasion--it is proposed in this bill in a way--we start off by saying that we want the public to have a right to know and that it should have that right at rather minimal cost. Then we get into the argument that the application fee of \$5, \$10, or whatever we might have proposed initially, which looked very reasonable from one perspective, winds up costing you staff time that gets into the thousands of dollars.

We start off with a simple process which essentially says, "We do not want to put something on the front end of this which is a real impediment to the public using this." On the other hand, we are not terribly happy with the fact that for a \$10 application fee, or whatever nominal amount you charged, we had staff time from three lawyers for three months who rolled up a bill of \$5,000, we had historians at work here and duplicating machines and so on, and so the total tab was perhaps \$10,000 but it cost John Q. Public \$10 to get at it. Are there concerns that this would be a problem?

Mr. DeLottinville: Surely there are concerns for people who work in archives because they are the ones who have to deal with this, but if the public has a right to know, the public should not be penalized for the poor record-keeping functions of a government. If information that was collected by the government is not readily accessible, the question should be, why is it not? If it is collecting the information and it is personal information or whatever, it has the responsibility to make sure those records are kept in proper order so that when they are turned over to an archives or when a request is made to the department itself, it should not take thousands of dollars to do.

It is not a perfect world, and there are problems in controlling information collected by the government or any other organization. It is a question of whether, because of those inefficiencies, the people who want access to information which their government has collected from them should pay the price for that; as you say, the price could be quite exorbitant in terms of thousands of dollars.

Mr. Chairman: The proposals here are much like those we have seen in other jurisdictions. We start off by saying you obviously have to appoint someone to be a commissioner at this, that or the other thing; they obviously need some staff and support staff. There is that kind of expense which we would normally absorb. The next layer is that everyone has to have access officers. For example, in the Congress in the United States each of the departments set up shop, hire people and away they go. They anticipate a demand and do their hiring on that basis.

We have seen in other jurisdictions too that very often when it gets right down to it, if something gets a little sticky in the decision-making process, the lawyers enter and we have long discussions on both sides as to whether litigation is necessary or desirable and then the litigation begins. What seems to be an easy process in some situations can very quickly become a very expensive process, and in some jurisdictions they have essentially said at some time this ought to be a user-pay concept.

For example, if you come in and cause 20,000 tax dollars to be spent, you can have the information, but you have to pay the \$20,000. Then we get into the interesting argument about whether that is fair. If I were doing a major news story or writing a book, there is a very good chance that I would recover those costs, even if I paid \$20,000 to get the information. If I made a successful book, magazine article, film or television program out of it, I could very easily recover those costs, or if I were writing the eminent historical piece on something, I am unlikely to be able to recover that. We have to draw lines to see what is fair. Are you anticipating that will be a major problem or you can cope with it?

Mr. DeLottinville: We would not like to see a freedom of information bill that would allow access only to those people who could afford it. The people who make prominent use of archives are, as you mentioned, people who are writing books, academics and people like that. The big majority of people who use archives are not those people at all. They are people who do genealogical research; they do family history. Most of them are retired and most do not have a lot of money, but their research is very important to them. If you say they can have information that the government has about them, their families or whatever only if they are able to pay, a lot of those people will not.

On the other hand, just talking from experience in the federal archives, we do not have a gigantic access section for federal records. It does not seem to be blossoming out, as you described it or as it might have in other jurisdictions.

Mr. Chairman: In the Canadian experience, and I think we are counting on this, there will not be the use of this information on a broad scale in litigation. In the American centres we looked at, one of the things they said repeatedly was that on an increasing basis, stuff that comes out under freedom of information is being used in litigation. In part, it may be that the American tendency is to sue people for starters and then worry about it afterwards. That seemed to be one of the problem areas.

In Atlanta and in Washington there seemed to be some indication that it started out with the inference that a freedom of information bill would be used primarily by individuals and journalists, but in practice it has tended to be lawyers who use freedom of information legislation and because of the nature of it, they are unconcerned, frankly, about the cost aspect of it. If they make an application under a freedom of information bill and get 500 pages, they are not worried that it will take them an extra 10 days to read the 500 pages because it all comes out in some legal bill in the end anyway. Are we wrong in assuming this is Canada and that will not happen here?

Mr. DeLottinville: As I say, I do not specifically deal with those types of cases, so I have not heard anything to the effect that this has been a major problem.

2:50 p.m.

Mr. Chairman: In the federal law, there has been no real blossoming of the use of it for litigation, has there?

Mr. Averill: I know a number of instances where academics who are writing either short histories or articles for academic purposes are feeling stymied by the federal public information law. It means their access, while it will probably eventually be granted, is delayed by four or five months in some instances. A lot of paperwork has to be gone through to get it.

I work at the University of Toronto. You keep hearing complaints from academics--they always have something to talk about--and they are usually at the forefront of research and they know what is going on. I have not heard any of them talking very much about people in the legal profession using the Freedom of Information Act to any extent here.

I do not think we can say it will not happen here, because there tends to be a seepage of techniques northwards across the border, and it affects us sooner or later. However, we can probably say that given our legal structure here, the amount of material being sought by lawyers for legal purposes will be relatively less than in the United States. One would have to be blind to say it will not happen; I think it will, but probably not as much as the United States. It is not a problem yet.

Mr. Chairman: We are left with our own little biases about what Canadian society is like and what people would do with this kind of legislation. We could then make a good guess and probably go as much on principle as anything else in establishing the practical guidelines for how you would charge for such services and limits you would put on that. You think we are reasonably safe in doing so?

Mr. Averill: I think so.

Mr. Chairman: I hope so.

Ms. Gigantes: I have a couple of more questions. I cannot refer to a page in your brief, but I am looking at the section in which you talk about the indexing of data banks. You begin--in whatever page it is--by saying, "The association also suggests that the section on data banks be revised to exclude personal information under the control of the Archives of Ontario." Then you go on to refer to personal information that has been collected by the government and the fact that you would be using the index that had been established by government ministries.

Mr. DeLottinville: The point we are trying to make here, and perhaps did not do it as clearly as we should have, is that there is a practical consideration. You do have to provide an index to all personal information banks in control of the government, which is fine if you do that for regular departments. However, because any personal information bank that has historical validity will go to the Archives of Ontario, you will start to have a mirroring effect, where that personal information bank is described once in the control of a particular ministry and then once again when it or part of it has been transferred to the archives.

Over time, what would happen in practice would be that the section for the archives would be just as thick as the section for the rest of the government departments because they would continually transfer records from the ministry, say, to the archives. It is more a practical consideration than one in principle, because records transferred to the archives are for public use. The archives spends a lot of time preparing various guides, indexes and whatever for the records it has. In addition to doing that, to then include them again in the index is a bit of a duplication of effort.

Ms. Gigantes: I understand. The second question I have relates to research. There is a provision in the bill that an exemption on the disclosure of personal information be allowed where the purpose is for research. I find that hard to understand. As I understand personal information as it is defined in the bill, it is information that has a name or a personal identifier attached to it. Is it likely that researchers are going to be needing names and personal identifiers when they are doing research?

Mr. Delottinville: In certain cases they would need the names to start off with. However, in the final product of their research they might not want to publish those names.

For example, if somebody were doing a study in ethnicity or something to that effect and in the personal data bank there was no way of sorting out people's ethnic backgrounds other than by the names--which is a difficult thing to do, but it can be done--in that case, the information they got from a particular data bank would have to include the personal names, but only so they could sort out how they would want the information. When they actually presented the results of their research, they would not want to reveal individuals but only social patterns or behaviour of certain ethnic groups. However, they might need that information during the part of their research to make certain judgements.

Mr. Averill: We run into this problem from time to time at the University of Toronto where we have student records going back in the original form, as opposed to published form, to the year of 1890, which from the point of view of storage conveniently eliminated the problem for the years before that.

There is a lot of need on the part of some researchers for data on students. At the university we have a rule where material that is not in the public domain--i.e., has not been published and disseminated within the university as a published document that is readily available to the public pertaining to a student--is not released to the public for a minimum period of 50 years after that record is created.

This has created some problems from the point of view of researchers who feel they should have access to names as well as to the data. In certain instances, a person may want to do an overview of a particular problem where

he does not need the names, but he needs the basic data. Through the archives, such persons can approach the body responsible for creating the records and get permission to consult the records, provided they sign a guarantee that they will not publish in any form the names of the individuals they run across.

There might be some provision in the legislation for regulations of that type to be made so that personal records can be looked at and data other than names can be taken. You have to be very careful about the privacy of the individual on the question of access to an individual's name. For instance, I can tell you what Bill Davis's academic marks were because I have seen his record and I happen to know, but it is going to be a long time before that becomes public knowledge.

Mr. McCaffrey: How long?

Mr. Averill: Another 20 years or so.

Mr. Chairman: In other jurisdictions, we have seen that two or three things happen when the flow begins. In some jurisdictions they said they went through their records and found that they were keeping a lot of information there was really no reason for them to have. They had a lot of garbage in their information system. From an archivist's point of view, would you say, "Useless or not, it is history and we should keep it"?

3 p.m.

Mr. Averill: No. When going through records, an archivist will in some cases keep when in doubt. If you are not yet in a position to make a judgement on the validity of a record and there is some question that it may not be worth very much but there is some idea that there is something of historical evidence there, you can retain that for the time being and schedule it for destruction perhaps at a later point when you are able to get a better perspective on it.

Part of the duty of an archivist is to weed extraneous material as records come in. We cannot possibly handle the volume of keeping everything. Researchers down the road would kill us if we did. For instance, who wants to go through a bunch of shopping lists that a person has dumped in with his or her papers that have no real evidential value? You keep things that have evidential value, otherwise you can get rid of them.

Mr. Chairman: That would not pose a problem for you either, and it might be one way to kind of clean up the information system.

Mr. DeLottinville: Another point we would like to make is that it is important that it is the archivist or somebody from the Archives of Ontario who actually examines the material before the decision is made to destroy. Once material is destroyed, there is no way to bring it back. It has been the case in the past where somebody in a particular department or office thought that these old records had no significance at all, when they were quite crucial; their importance was not evident at first glance, but they provided a piece in a puzzle that had been missing for a long time.

In terms of this bill and the clauses dealing with custody and control, it would be important for somebody who was representing the archival interest to have permission to examine just about any record that the government of Ontario creates, to be able to say, "This has no historic value, so it can be disposed afterwards, or it is no longer required for operational purposes," or

quite early on to say, "This definitely does have an archival value and should not be destroyed, and once no longer needed by the ministry, should be transferred to the archives."

There was one case in the United States where certain records of the Federal Bureau of Investigation were destroyed. The FBI would not let the archives look at the actual contents; they had them sign it from sort of a précis of what was in the records, not really being quite specific what was actually destroyed in it. It happened that some valuable material was lost. It is important for the archives to have at least that ability to examine any record created.

Ms. Gigantes: I want to go back to the question of research. I still find it very difficult to understand why, for research purposes, researchers should have access to information that can be classified as personal information--personal school records, personal medical records or whatever. Why is it treated as a subject of exemption in this bill if a researcher looks at material and is obligated to reproduce what he or she learns through looking at the material in a way that cannot identify anybody personally?

I have an intellectual problem understanding why we have to make an exemption for researchers. Is it not the case that a researcher from outside an archives, a library or whatever who has access to information and makes an agreement with that organization to reproduce the material publicly only in ways that do not identify people personally becomes in a sense an agent of the body that authorizes the review of the material? If that is so, why do we have to have an exemption for research purposes? I do not understand that in the law.

Mr. DeLottinville: I guess the alternative would be that all personal information held by the government would be restricted. A termination date has not been provided in this bill anyhow, such as 100 years after the birth of an individual or 100 years after the creation of the record, where personal information is no longer personal because the person has long since died. For example, census records for the government of Canada are available after 100 years. As I mentioned, a large body of people who do research at the archives are genealogists. The name for them means everything. They need that personal information for records that are quite old.

Ms. Gigantes: I am not asking my question the right way. When a researcher has the objective of reproducing, in a research paper or document, some analysis that is based on an examination of personal information records but does not reproduce that information in any way that can disclose the identity of any person who is the subject of that research, why do we have to have an exemption for research purposes?

I will tell you why I am worried about it. It seems to me that if we write an exemption into the law, then all kinds of everything can go on in terms of examination of personal records and personal information on the basis that it is research. It seems to open the door wide open. I would like to see that door closed as narrowly as possible.

Let us say somebody is looking at personal records in almost some kind of agent role with an institution that has control of those records, such as an archives, and undertakes not to disclose information in a way that will identify anybody personally but who wants to know how the Irish behaved medically in Chicoutimi in 1972. Why can we not talk about a researcher becoming an agent of the organization that holds those records in trust? Is that not a better and narrower way of defining it for our purposes?

Mr. Averill: I am not sure I agree with you that the researcher does become an agent of the institution that is holding the records. Often in instances such as this, the name of the person is not important. If you structure the collection of your information in your paper or whatever it is you are writing in such a way that an individual cannot be identified, you are doing no harm to that individual or to a collection of individuals; yet you may be doing a fair amount of good for society at large because you are studying a particular social problem that you would not be able to study unless you had access to that data.

Ms. Gigantes: Yes, any epidemiological study is going to depend on that kind of information.

Mr. Averill: That is where the flexibility that the archival system uses comes in handy. It permits people who are doing that type of research to have access to that sort of information on the proviso they do not publish the names.

I know of one case a number of years ago where the public archives acquired a set of records that were almost totally psychiatric records of one kind or another. The only condition under which it was agreed they could acquire them was for someone to go through the records to remove the names of all the individuals. Sex, age and everything else were there, but the names of the individuals were removed because these records were of such a controversial nature that if any name connected with the data came out inadvertently, someone's reputation would be destroyed. Even if the person were dead, it might have a rather devastating effect on the children in particular and maybe even the grandchildren. Therefore, in those instances, the names were removed because of the highly confidential and controversial nature of the records.

Ms. Gigantes: I guess I am still not explaining my question well enough.

Mr. Averill: I know what your problem is, but I am not sure what the answer is.

Ms. Gigantes: Perhaps we should be asking other people. What you have made clear to us is that there is a demand for that kind of research.

Mr. Averill: There is.

Ms. Gigantes: We can well imagine that there is. I simply do not like the way this bill deals with it, that is all. I think an open-ended exemption for research purposes is too wide. I do not think it accomplishes what we need.

Mr. Chairman: If there are no other questions, thank you very much for appearing this afternoon. We appreciate your comments and the recommendations you made to the committee.

I am going to ask the committee to stay for a few minutes to do a little organizational business. We will not need Hansard for it.

The committee adjourned at 3:07 p.m.

STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES, BOARDS AND COMMISSIONS
FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

WEDNESDAY, MARCH 26, 1986

Morning Sitting



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Substitutions:

Gigantes, E. (Ottawa Centre NDP) for Mr. Martel

O'Connor, T. P. (Oakville PC) for Mr. Sterling

Clerk: Forsyth, S.

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Staff:

Eichmanis, J., Research Officer, Legislative Research Service

Witnesses:

From the Board of Trade of Metropolitan Toronto:

Dean, J. M., Chairman, Legislation Committee

From the Canadian Manufacturers' Association--Ontario Division:

McFarlane, R., Chairman, Subcommittee on Freedom and Information

Swenor, R., Assistant Secretary

Lloyd, G., Director

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS
AND AGENCIES, BOARDS AND COMMISSIONS

Wednesday, March 26, 1986

The committee met at 10:13 a.m. in room 228.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
(continued)

Resuming consideration of Bill 34, An Act to provide for Freedom of Information and Protection of Individual Privacy.

Mr. Chairman: The first deputation this morning is the Board of Trade of Metropolitan Toronto. Jim McCracken and John Dean are here to present it.

We have received your brief and members have copies of it. For your information, we normally try to let you go through the brief and advise us of any other information you like. Then there will be an opportunity for members to ask questions back and forth. Go ahead.

THE BOARD OF TRADE OF METROPOLITAN TORONTO

Mr. Dean: I am John Dean. I am senior counsel, manufacturing and staff development, with IBM Canada Ltd., and also the chairman of the legislation committee of the Board of Trade of Metropolitan Toronto. This is Jim McCracken, who is the manager of the legal department for the board of trade.

The Board of Trade of Metropolitan Toronto is recognized and respected as the voice of the Metropolitan Toronto business community. From its inception in 1845, the board has maintained a keen interest in government measures that affect corporate and commercial affairs. Our membership exceeds 15,000 persons, representing large and small firms which transact business in the international and national fields. In the light of the nature of our membership, the board believes it can fairly claim to represent the interests of the major sections of business in Toronto.

Thank you for the opportunity to present our views. I will briefly go through the points raised in the brief, which you have. The board generally agrees with the concepts expressed in Bill 34. We believe in open government and that the bill should allow the public at large to get at government information.

For some time, we have been following the progress of this bill and its predecessor bills because business gives information that is quite confidential to government. The board is concerned that the inappropriate release of information that is given to government in confidence could damage the business which owns that information or which gave the information. Inappropriate release of information from plant locations to product information could cause land values to rise and could give competitors an unfair advantage.

We have been following this legislation and legislation in other jurisdictions, both at the federal level and in other countries, and we have developed some concerns. We have found that the experience in the United States has been that the requests for information have come mainly from other businesses, from very specialized interest groups, and have not typically come from the public at large.

From our experience or observations of the United States, the kinds of information sought are: corporations seeking cost information, marketing strategies or plant design knowledge in relation to a competitor's product or operations; investors seeking information with a view to making open-market share purchases; management or labour seeking information in the context of the collective bargaining process; corporations seeking information concerning government benefits conferred upon another corporation; insurers seeking information to assess risks; businesses seeking damaging financial or political information in order to diminish a competitor's reputation; and prospective new entrants into a marketplace seeking profitability information on existing market practices of their potential competitors.

It is the board's opinion that if this kind of information is released, it runs contrary to what the Williams report stated should be the main purpose of an access to information act. The Williams report indicated that business information should not be released; that to keep communication lines open between government and business, business information should be protected.

Therefore, we are concerned that section 17 of Bill 34, which deals with business information, could give the head of an institution the authority to release that information and damage the business or party that provided it. We are concerned about the discretionary nature of the section. I was pleased to read in the paper last night the Attorney General (Mr. Scott) had indicated there is an intent to change section 17 from a discretionary section to a mandatory one. We support that direction.

However, even if the section becomes mandatory and not discretionary, the board is also concerned with respect to the test in section 17, namely, that a third party trying to prevent the release of its information must prove significant damage. There is no indication in the section of how the head of the public institution is to conclude that significant damage might occur. The board feels that requiring the head to make a decision in this area is perhaps unfair. I am not sure how each individual head will come to grips with that. Therefore, there is a concern that the establishment of whether there is significant damage could be abused. Quite frankly, the business community would feel much more comfortable if, before any decision by a head to release information is carried out, the affected parties could appeal the decision to a court of competent jurisdiction, where the matter could be addressed fairly.

10:20 a.m.

I know there is some suggestion that putting a right of appeal in Bill 34 may cause the courts to have an increase in business, which is costly. The board and I do not think that would happen. Just having the ability to appeal to the court should give the business community the confidence that the process set out in Bill 34 is being implemented in an equitable fashion. The federal legislation, which is somewhat similar to Bill 34, has a right of appeal through the federal court. It has been in place about three years now. To the best of my knowledge, there has been one appeal to the federal court. That was just recently in the case of the information commissioner appealing a

decision of the Canadian Radio-television and Telecommunications Commission not to release certain information to the Saskatchewan government with respect to the licensing of a television station. We feel, therefore, that there should be an appeal to the courts and we do not feel that right would be abused.

The board of trade is also concerned with the effect of section 11 of the bill. This section requires the head of an institution to release information if he has reasonable grounds to believe there is a grave threat to public safety or to the environment, if there is some form of hazard that should not be kept secret because it could cause damage. We are concerned that the section is very short--one sentence--and yet has implications that probably deserve a bill as large as Bill 34 on that issue alone. The section does not tell the head how to exercise the finding that there will be a grave environmental health or safety hazard to the public.

Without an appeal to the courts on this issue, it is hard to see a body of law developing to give the heads of departments some indication of how they should act under the section. We are concerned that the heads of institutions might err on the side of convenience and release information that, it would become quite clear with hindsight and more investigation, should not have been released, and yet the information being released does significant damage to the individuals involved.

There are other acts, both federally and provincially, that go into health and safety, such as the Occupational Health and Safety Act. The Workers' Compensation Board and the Atomic Energy Control Board, to name a few, are examples of bodies that have been created with the authority to delve into this topic. We on the board feel that if a head finds some information that he or she thinks may come under section 11, rather than releasing it to the public, he or she should release it to the authority that is mandated by law to delve into such situations so it can complete an investigation and take appropriate action, as set out in the various acts governing it. If information is released to such agencies, the parties affected should be notified so they can participate in the investigation.

Subsection 28(6) of the bill allows for the filing of additional information to support the arguments that information should not be released. This information has to be provided in writing, unless the head permits such information to be given orally. The board is concerned that a business, concerned that its information is going to be released and wanting to give more information in support of not releasing the data the government has, may not do so because the additional information may also become subject to the decision to release the information, perhaps to a competitor.

The board feels that for the section to have use to the business community and for the business community to have confidence to go in there and discuss things with the heads of institutions, any additional information given under these circumstances should never be released. That information should be kept confidential, even if the head ultimately decides to release the information. The board feels that if the head does decide to release the information, there should be a right of appeal up through the commissioner and on to the courts.

Of course, a decision to appeal to the courts would involve the decision to make the additional information public, because at that level it would be public. The party may decide it is better to stop trying to get the

information released if the matter goes to the court because it could cause more damage if he tried to fight it in that public forum.

There is an interpretation that Bill 34 would apply to information that was given to the government prior to the act coming into force. An awful lot of information has been given to the government in confidence over the years. Quite frankly, our members are not quite sure what information. They do not know the extent of it. Should there be a concern if the bill has retroactive effect? The board would prefer the approach that the bill only take effect from the day it is proclaimed and that any information that was given to the government prior to the bill coming into effect should be excluded from the force of the act. Any record that was created prior to the act coming into force but given subsequent to the act coming into force would be subject to the provisions of the bill.

The board is somewhat concerned with the way section 60 is drafted. It requires a standing committee to look into the confidentiality sections of all provincial acts and to reconcile them with the provisions of Bill 34. It appears that the act will prevail over the confidentiality sections of the other acts, unless the other acts specifically provide otherwise, two years after this section comes into force.

The board is concerned that the review and subsequent changes that are contemplated to the other acts may not be completed within that time frame and that the passage of time would result in this act taking precedence over the provisions of other acts which may have protected the confidentiality of information given to the government pursuant to such acts. The board recommends that the section should be written from the other end of the barn, if you like. The sections of the other acts should take precedence until such time as they are amended to make them subservient, if that is the decision, to the effect of this bill.

The board is also concerned that any non-Canadian could come in and avail himself of the provisions of the act and get at information that could be detrimental to Canadian business. The board would like to see a section entered into the bill that restricts the use of the process to Canadians or to people who are authorized to be in Canada and to work in Canada, that is, landed immigrants.

10:30 a.m.

Perhaps there should be a test or requirement to certify, when applying for information, that the individual is a Canadian or, if Canadians are acting for somebody else, that the party they are acting for is a Canadian or a landed immigrant and entitled to make use of the process set out in Bill 34. Perhaps there should be a requirement, much like when you apply for a driver's licence where you make statements about your physical health, where, to make the requirement meaningful, signing a false statement should carry sanctions.

Section 49 of the bill is very short and puts the onus in an inquiry on the head to prove that a report or part of a report falls within one of the specified exemptions in the act. Business is concerned, particularly if there is no right of appeal to the courts, that if the political will is to release the information, the head of an institution could just do a lousy job of proving that the report falls within one of the specified exemptions in the act. The Board of Trade of Metropolitan Toronto feels that putting the onus on the head to prove something is dangerous and could be abused. We prefer that onus of proof not be there.

I have been reading from my notes and going through the main points of our brief quickly. The most significant one is the right of appeal to the courts. If access to information is going to work and if business is to have confidence that the process is going to be followed in an equitable fashion, there should be a right of appeal to the courts. Mr. McCracken and myself are prepared to answer any questions you have.

Mr. Warner: I appreciate your presentation this morning. There are two areas I would like to concentrate on from your presentation. First, you provided a list of uses to which the freedom of information process has been put--

Mr. Dean: In the United States.

Mr. Warner: --in the United States. Can you give me the source of your information?

Mr. Dean: Yes. It was prepared by a consultant we have, whom International Business Machines uses from time to time in Ottawa. It was with respect to the federal act. The comment was made by Heward Grafftey.

Mr. Warner: Did he supply you with figures as to the volume of requests or a percentage breakdown?

Mr. Dean: Yes. He said that in the US where they have similar legislation--I am quoting from his report--"approximately 80 per cent of all requests for government-held information come from business and nonprofit interest groups. Invariably, the information sought pertains to activities of other corporations or organizations." Then he lists some examples. It is not exclusive.

Ms. Gigantes: Does that relate to the categories of information that you are speaking of, such as commercial information?

Mr. Dean: That is right.

Ms. Gigantes: It is not a general statement about the use of access to information. It is a statement about use of access to information that is commercial information.

Mr. Dean: Business information. That is right.

Mr. Chairman: Can I clarify that? You are talking solely about US federal legislation?

Mr. Dean: That is correct.

Mr. Chairman: May I conclude from this that the federal act in Washington is predominantly used by lobbyists?

Ms. Gigantes: No. In answer to my question--

Mr. Dean: I do not think he said that. It might be true. He says: "The aim of this legislation"--that is the Canadian federal legislation--"is to allow the public at large to request and have access to information held by different government departments or agencies. From the corporation and business viewpoint, these laws can prove to be a double-edged sword. In the United States, for example, where similar legislation is in force,

approximately 80 per cent of all requests for government-held information come from business and nonprofit interest groups."

Mr. Chairman: Essentially lobbyists.

Mr. Dean: Not necessarily.

Mr. Chairman: Who else would there be?

Mr. Dean: If a business were acting for itself--

Mr. Chairman: It would be acting through somebody we would call a lobbyist.

Mr. Dean: It might be acting directly, though.

Mr. Chairman: A consumer group would be another kind of lobbyist.

Mr. Dean: It could be. Minority interest groups.

Mr. Chairman: Advocacy groups.

Mr. Warner: Does he go on to specify or categorize the types of information request?

Mr. Dean: Just the list I read. It is very general.

Mr. Warner: In the spirit of the legislation, do you think we could be privy to a copy of this document?

Mr. Dean: Yes. I might add that the board agrees with Mr. Grafftey about the type of information he has listed which would be a concern to us in Ontario if that was the kind of information being requested.

Mr. Chairman: The reason we want to pursue this is that we have heard several versions now about who uses freedom of information laws. In different jurisdictions where we have had a chance to visit with officials, we get quite a variety of answers about who actually uses this type of legislation. The original assumption that the media would be the prime user seems not to be true, but there is a scarcity of any concrete proof of who uses it. There seems to be no shortage of opinion but a shortage of facts.

Mr. Dean: I would feel comfortable getting back to Mr. Grafftey and asking him for the background to his statement and making that available to you.

Mr. Warner: It would be very helpful, as the chairman mentioned. I had a very different picture of the usage after we met with the folks in Washington. Because of other protections afforded to commercial interests in the US, there did not appear to be an abuse about which the businesses or corporations were particularly concerned. None the less, it would be very helpful to me and to the rest of the committee, I am sure, if we had a copy of it or more detail about the data.

Mr. Dean: I can undertake to provide more detail and hand out that copy as well.

Mr. Warner: My second and final question is related to section 11,

which deals with supplying information about hazardous goods or, as the bill states, "a grave environmental, health or safety hazard to the public." Could you be a bit more specific about what kind of situation you envisage occurring about which you would have a concern that information would be given that could create a problem for you or any of the members you represent?

Mr. Dean: The kind of situation might involve product safety, an announcement that a product is dangerous when, in fact, it may not be dangerous. The quality of wine might be one that is a little more recent, or environmental concerns, for example, where there may be a problem in a plant where there is a spill.

10:40 a.m.

Mr. Warner: If you weigh up the issue in terms of the public good, do you not see it as an advantage, to take the example of wine, which is of interest to the general public these days in Ontario, if we had had this freedom of information law a few years ago? A member of the general public, by using that law, would have been able to obtain information, which we understand was kept by departments of the former government, that would have revealed a health hazard and by so doing would have alerted the public to a potential hazard. Is that not a greater good than simply providing corporate protection?

Mr. Dean: I do not know. We are speculating about whether that would have surfaced more quickly had this legislation been in place. I am not suggesting the head of the institute or the government person who has that information should not do the proper thing with it. In fact, the laws exist today that require the proper course of action to be taken. Perhaps there are food and drug acts and their requirements were not followed. I do not know. I only know what I have read in the newspapers, but I do not agree with sitting on information and not doing anything about it.

Our recommendation would be to require the head to notify the individuals who are concerned--in this case it would have been the wineries, and they may have been notified--and then turn it over to an appropriate authority to investigate and take action. I think the way it is happening is now it would happen if this were passed the way it is written. It is going to come out sporadically, dragged out over time, and I and the board think there is a requirement to investigate known hazards, get to the bottom of the matter and take the proper action. However, I am not sure you can handle it in a one-sentence section in a freedom of information act.

Mr. Warner: On balance, if the bill is left essentially the way it is now but one element is added--that is, the right of appeal to a court--could your association live with the bill? If we simply added the appeal to the court process, with perhaps some minor wording changes to other sections of the bill, would your association be able to live with that?

Mr. Dean: That possible solution was never presented by the legislative committee to the board for consideration. I have some opinions that might be shared by the board. I do not think it would, but that would certainly delay the release of the information. If it is a real hazard, I am not sure the board would recommend a process that delays the proper action being taken. Our position is to bring the information to the attention of the parties affected and get it to the proper agencies that can deal with it, where there is legislation to deal with it. The Ministry of the Environment might be the one that gets into it. It might be the Ministry of Health. The

aim is to get it out of the hands of the head of the institution that has it and into the proper institution that can deal with it. If it happens to be in the hands of the institution that is supposed to deal with it, they had better follow their mandate. If they do not, there is another kind of problem.

Mr. O'Connor: Thank you, gentlemen, for a well done brief. My questions are largely along the lines of Mr. Warner's in dealing with section 11. I have some concern about your concern and that of many others. A theme seems to be developing in a number of the briefs and I understand the one to follow you, from the Canadian Manufacturers' Association, will also address section 11. I am concerned that section is under attack, frankly. I really feel there is a necessity for the obligation on heads and others to advise the public in circumstances where there is an environmental danger or health hazard and that should be done as quickly as possible--forthwith--so that there is no delay, for the maximum protection of the public.

You have outlined generally some of the problems you might foresee in this area and then suggested as a solution that they be referred to the appropriate agency for review.

Mr. Dean: And action.

Mr. O'Connor: And action. That may do only two things: it may only delay letting the public, which is at risk, know about the danger, and it may not serve the purpose you want it to in any event, because in most cases the agency to whom you wish it to be referred will be subject to the provisions of this act and will therefore immediately, upon learning of that information, have to reveal it to the public anyway.

For instance, in the example you gave us of the ethyl carbamate in the wines, the Liquor Licence Board of Ontario is an agency which the Attorney General (Mr. Scott) intends to include. Immediately upon receiving that information, I presume it would be subject to this and would have to reveal it, rather than trying to deal with the problem in some confidence to clear it up. However, there would have been a delay in letting the public know. The idea of this section is to require public information as soon as possible so the public can be protected.

You also advise that the person who brought the information to the attention of the ministry should be advised that it is being referred to an agency. That is all fine and dandy but we are not trying to protect his interest. We are trying to protect the interest of the public. I really think some form of section 11 is required to remain in the act. I will put it this way: I am not convinced by your general examples that your position of maintaining confidentiality for a certain time outweighs the dangers to the public in regard to the really grave health hazards and environmental risks about which we are talking.

Mr. Dean: It is hard to be very specific in coming to grips with a concern when the section is so general.

Mr. O'Connor: Maybe the protection you seek is in the word "grave." A judgement call has to be made on whether it is grave enough to advise the entire public, and there may be litigation defining that term over time. If that is the concern, maybe we should work on better defining "grave" at this point in the procedure rather than letting the courts do it.

Mr. Dean: At the moment, the courts will not get at it under this act the way the bill is written.

Mr. O'Connor: They will if the head releases something and causes some damage to a company or a corporation which then brings some action against that head and seeks damages, feeling that he exceeded his mandate in that he misinterpreted the word "grave." That is how the courts might get at it. I am making a comment. I am not really asking questions. I do not share your concern with regard to section 11.

Mr. Gigantes: If I could very briefly take you back, Mr. Dean, to your question about section 11, you suggested, if I understood you correctly, that you would like to see the possibility of court review established one step before a decision by a head. Did I understand that correctly?

Mr. Dean: That is correct with respect to the issue of releasing information to the public. That would not apply to the release of information to another government agency to review and take action.

Ms. Gigantes: What would happen, if we follow through on your suggestion, is that the third party would decide there is a possibility that a head might make a decision to release information and would go to court before the head made a decision?

Mr. Dean: That is correct.

Ms. Gigantes: That would mean the court hearing would be in private. I just do not understand. It would have to be a nonpublic court hearing for you to achieve the purpose you are after.

Mr. Chairman: The question is, how would you take a nondecision to court?

Mr. Dean: The head makes the decision that he will release it.

Mr. Chairman: Oh, so he would make the decision first.

Mr. Dean: Before it is actually carried out, the affected party has to weigh, "Am I that concerned about it that I want to go to the courts where it would be public?" There is a bit of risk there. "If I go to court, perhaps the information will get out and the arguments pro and con will get out."

10:50 a.m.

Mr. Chairman: You would let this guy stick his head in the noose and the debate would be, "Shall we pull the trapdoor?" He is allowed to make the decision but he is not allowed to do anything about it.

Mr. Dean: The affected party would have a period of time to refer the matter to the courts, as I believe is the case in the federal legislation. Failing that, then I assume it would be implemented.

Ms. Gigantes: That would be after the decision was made.

Mr. Dean: Yes. The head commissioner, if it went up through that route, would say, "I have reviewed the matter and I have decided I am going to release it." They give reasons. At that point, the affected party should have the choice to take the one additional step.

With that ability to go to court, the business community would probably have confidence in the decisions that were made below the court. As I said,

there have not been that many cases under the federal legislation that were litigated in this way.

Ms. Gigantes: You were concerned about the clause in section 11 that allows a head to disclose information where there is grave threat to public safety or the environment. I think the phrase you used was you were afraid that the head might err on the side of convenience. Following on Mr. O'Connor's point, it seems to me that what we have seen very often with the agencies that you have suggested that really have the legislative authority to delve into questions of health, safety and the environment is that the errors of convenience have been errors of nondisclosure. They are precisely the opposite of the errors which you feel are going to spring from this bill.

Mr. Dean: That may be the case, but the errors may relate to information that is not business information. I am only here to represent the views of the business community and we are concerned about commercial business information. I do not have the facts and figures as to how much information has not been disclosed, but business has a real concern that if it is politically convenient to release the information, then--

Ms. Gigantes: It has been in the past politically convenient not to release the information. I guess that is the point of having a bill like this when it gets to matters of health, safety and the environment. You read the Globe and Mail, the Toronto Star and The Toronto Sun as often as I do and you know that for the last 10 years, since you and I have been adult readers--

Mr. Chairman: I caught that.

Ms. Gigantes: --of the media, we have certainly read many stories and heard it on the Canadian Broadcasting Corp. where many agencies have erred on the side of convenience in not releasing information to the public and not taking action--

Mr. Dean: What types of information?

Ms. Gigantes: --that involved commercial interests. These are questions of pollution of the environment and of contamination of products. The list is long.

Mr. Dean: We are perhaps speculating again, but I believe the information that was not released was probably got from the business community to help solve the problem. They got it because the businessman knew it was given in confidence and knew it would not be prematurely released until the matter had been clearly wrestled to the ground.

Ms. Gigantes: Somehow prematurely that drags over five, six, 10 years and more in many cases seems to me to be leading to what I think the information experts call stale information. If you leave a matter long enough, it becomes the accepted practice. With one recent example with the wine industry, we have done precisely that, and the problem has been with us for a long time.

The agency responsible for making sure that the health of the public, in so far as contamination of that product was concerned, was protected did not take action. It is precisely for that reason, though there are third-party commercial interests obviously involved. I am sure a lot of wine industry lobbyists could advance a great many arguments to the government about how the problem had to be worked out quietly. The evidence is that did not happen, and

the conclusion in the public mind is that we must have some legislation which inspires better action.

Mr. Dean: Do not confuse the concerns the board has with section 17 with the concerns it has with section 11. If it is commercial information about the way a product is built, trade secrets, market forecasts, plant locations, which is given to perhaps justify the receipt of government grants to go into a new area to help with employment, which would be the justification for giving the grant, then this kind of information, which is flowing freely back and forth at the moment in confidence should remain. Therefore, we do not like the discretionary nature of section 17 and we do not like the need to show significant interference. That is the comment on that.

If buried in that kind of information there is something of a grave environmental hazard, then you would go to section 11 or you would be covered in an act that deals specifically with that kind of problem, and it is more than just a one-liner.

Ms. Gigantes: I guess the point I am trying to make is that we have found that government agencies which have responsibilities through legislation to act on behalf of the public in terms of safety, health and the environment have frequently erred on the side of convenience or made political judgements, as you might term them, but which seemed to us to have been judgements that should have been the opposite of what would have happened had the public had access to the information.

Mr. Dean: I cannot speak for the situations you are talking about because I--

Ms. Gigantes: They inspire this kind of clause; so you have to take them seriously.

Mr. Dean: Let us assume that what you are saying may be true. If the government is motivated to continue with that kind of approach, I do not think a one-line sentence, section 11, in an access to information act is going to cure the problem.

Ms. Gigantes: I agree with you and I would like to see that section toughened.

Mr. Dean: I would like it to be a little more specific, so I could be a little more specific with the concern.

Mr. Chairman: We thank you very much for appearing before us this morning and we appreciate your comments.

The next group of witnesses is from the Canadian Manufacturers' Association. This brief is in your book as exhibit 70. Appearing on behalf of the Canadian Manufacturers' Association are Gordon Lloyd, a director, and Ross McFarlane, general counsel for General Motors of Canada Ltd. Forgive me for not standing.

Interjection.

Mr. Chairman: I usually stand up when Mother Motors is involved, but I will not today.

Bob Swenor, who is the assistant secretary of Dofasco, is also here. As

with the previous delegation, we would appreciate your leading off, and then members will have a little bit of arguing to do.

CANADIAN MANUFACTURERS' ASSOCIATION--ONTARIO DIVISION

Mr. McFarlane: Thank you very much for allowing us to appear before you today. As the chairman has indicated, my name is Ross McFarlane. I am the chairman of the CMA subcommittee on freedom of information. As well, we have Gordon Lloyd, who is a director of CMA, and Bob Swenor.

11 a.m.

CMA is a voluntary organization, an association of manufacturers who are producing 80 per cent of the manufactured goods in Canada. Fully 75 per cent of CMA's members have fewer than 100 employees. Despite the fact that two of us are representing relatively large companies, the preponderance of our group is relatively small companies. Sixty-five per cent of CMA's members are located in Ontario and one quarter of Ontario's work force, or more than one million employees, are directly employed in manufacturing.

In our submission today we are going to be focusing on only four sections of Bill 34. We plan quickly to go through the points we make in the brief. You will have an opportunity, if you have not already, to read the brief in total at some other time.

The Canadian Manufacturers' Association supports freedom of information legislation as essential if we are to have more open government. The Nordic countries say it even better: "Freedom to print abolishes the pernicious curtain of secrecy behind which self-interest, bias and unlawfulness could play its abominable game at the citizens' expense."

We would like to stress that it is important that such legislation adequately protect trade secrets and other sensitive confidential information of third parties. We do not want to jeopardize the present co-operative approach between industry and government in Ontario that is based on the voluntary flow of information from business. We are going to focus very carefully on the four sections that are of concern to business.

1. We think section 17 is the most crucial section as far as business is concerned. It is the third-party information section, and we believe it should be redrafted to follow section 20 of the federal Access to Information Act as a model.

2. The second main area we would like to discuss this morning is that for freedom of information legislation to be meaningful, there must be an appeal outside government to the courts.

3. Confidentiality provisions in other Ontario acts should override the Freedom of Information and Protection of Privacy Act. That is section 60. The standing committee on procedural affairs and agencies, boards and commissions should be charged with reviewing confidentiality provisions in other legislation for consistency with the freedom of information act.

4. When we get to section 11, there should be provisions for expeditious notice to ensure that only ministers have a duty to disclose and clarify the type of emergency or hazard that triggers the duty.

Let me move right into section 17. It provides for the need of a

government institution to disclose information submitted to the government by a third party. The federal Access to Information Act also provides for disclosing third-party information under section 20. The Ontario proposal differs significantly from the federal legislation in many key aspects. We do not believe there are justifications for these differences in terms of trade secrets, public interest override and the general protection for third-party information.

Dealing first with trade secrets, the federal legislation in subsections 20(1) and 20(6) recognizes that there should be absolute protection for trade secrets that is not subject to any public interest test. The Ontario proposal does not provide similar protection for trade secrets.

Our position is that companies should have the absolute right to have their trade secrets protected. In many cases, the most important asset or valuable of the corporation is its trade secrets. You can imagine the dilemma of the Coca-Cola company, for example; if its formula was released. Therefore, we recommend that the Ontario legislation follow the example of the federal legislation and preclude heads of government institutions from releasing trade secrets of a third party.

The second important difference we would like to mention between the federal legislation and the Ontario proposal is the public interest test that will be used in determining whether the third-party information should be disclosed. The federal test clearly recognizes the proprietary nature of third-party information and places the onus on the head of the government institution to determine that the interest in disclosure clearly outweighs the interest in not disclosing the information. Moreover, the interest in disclosure is specifically circumscribed to be interests that relate to public health, public safety or protection of the environment.

The Ontario proposals provide no such safeguards. In fact, the way the Ontario proposal is drafted, there seems to be a bias for disclosing confidential third-party information when read in conjunction with section 49. The federal public interest test has a good, working track record. We recommend that it be adopted in Bill 34.

A third difference between the federal legislation and the provincial proposal is the protection provided to third-party information generally. First, under the federal act, subsection 20(1), the exemption from disclosure is mandatory, while it was discretionary in the provincial proposal under subsection 17(1). We are comforted with the recent announcement by the Attorney General (Mr. Scott) that he is going to make this area mandatory, but we do not think this change is going to correct all the problems we are going to have with section 17.

If business is to have confidence in an exemption from disclosure for information it provides to government, it is imperative that it be mandatory and not discretionary for information that fits under the exemption.

The next area with which we have difficulty is in fitting in under the exemptions provided under section 17. The provincial exemption is much more limited than that of its federal counterpart, as it only applies when both of two conditions exist. First, the information must be confidential--supplied in confidence implicitly or explicitly--and, second, the disclosure of the information must be prejudicial as defined by one of three injury tests.

It is important that business information submitted to the provincial

government in confidence be held in confidence without its protection being subject to having to be proven that the release of it is going to be prejudicial to the corporation.

We recommend that the provincial legislation incorporate a similar provision to clause 20(1)(b) of the federal act, so that information supplied in confidence is exempted from disclosure without the need to prove disclosure would result in prejudice.

As I say, industry is used to working with the federal wording, and there is no apparent advantage to the proposed different provincial wording. For purposes of consistency and to build on the working experience industry has gained with the federal legislation, we recommend that the federal language in section 20 be used in place of section 17.

Business needs to be able to rely on the type of certain protection of confidential information provided under section 20 of the federal legislation, not the type of arbitrary protection that clause 17(1)(b) of Bill 34 may provide.

11:10 a.m.

In our brief, we set out on page 11 language that we recommend be modified in place of section 17.

The next major heading I would like to move to is the section 46 appeals. We do not plan to say too much today about appeals, because we understand changes are contemplated to this section. Certainly there are problems where there is an appeal to a politically appointed commissioner with no further appeal to the courts. Even then, the commissioner cannot overturn discretionary decisions of the head of a government institution to release or not to release information. This effectively makes even the limited appeal mechanism to the politically appointed commissioner almost meaningless.

I would now like to move to our third area of concern, which is section 60, the interrelationship with other legislation. Section 60 specifies that the Freedom of Information and Protection of Privacy Act takes precedence over other Ontario acts except for other acts that specifically provide otherwise. It is further stipulated that this particular provision will not come into force for two years, thus keeping the confidentiality provisions of other acts in force until then.

The section also provides that the standing committee on procedural affairs shall during those two years comprehensively review all confidentiality provisions in other acts. Presumably, that review will include a determination as to whether any of those acts should be amended specifically to provide that their confidentiality provisions take precedence over the Freedom of Information and Protection of Privacy Act.

A flaw with the approach in section 60 is that the review by the procedural affairs committee may not be completed within the anticipated two years. If this occurs, legislation that should be amended so its confidentiality provisions take precedence over the freedom of information legislation may not have been amended to achieve this result. In that case, the freedom of information legislation would prevail despite its inappropriateness. This could be a serious, unnecessary and unfair breach of confidence for those expecting confidential information they submit under other legislation to be protected.

The problem we have with this section is not limited to just business information. There are a lot of acts where it would apply. For example, under the Child Welfare Act, where adoption is taking place, the names of natural parents and the child are under some confidentiality sections now; if they did not get changed within the two years, you could have information being disclosed that was not contemplated. Of course, there are lots of business acts that would concern us in a similar fashion.

We should also mention the experience that has been had under section 15 of the Charter of Rights. Three years were given before that section would take place to enable the federal government and the provinces to make the necessary changes to their legislation. As we all know, that did not happen. We think it is similarly unreasonable to expect the type of comprehensive review of confidentiality provisions in all Ontario statutes to take place over the next two years for section 60 to work as it is drafted.

Therefore, we would recommend that a better approach would be for confidentiality provisions in other Ontario acts to take precedence over the Freedom of Information and Protection of Privacy Act. We would also recommend that the standing committee on procedural affairs be charged with reviewing the confidentiality sections in other legislation for consistency with the Freedom of Information and Protection of Privacy Act and with proposing amendments to such legislation where appropriate. This approach would enable the committee to proceed in a timely fashion to consider confidentiality provisions in these other acts and whether they should be amended to make them consistent with the Freedom of Information and Protection of Privacy Act or whether they should remain as is.

Finally, we would like to touch briefly on section 11, which was the object of quite a bit of discussion in the previous presentation. That section imposes a duty on heads of government to disclose any records to the public that they believe reveal a grave environmental, health or safety hazard to the public. Subsection 58(1) also allows that duty to be delegated.

For the section to work effectively, we would recommend a number of safeguards that would be achieved by amendments (1) to provide for notice, (2) to ensure only ministers have a duty to disclose under section 11 and (3) to clarify the types of hazards that trigger this duty. The consequences to business of inaccurate disclosures of this type could be disastrous. They also have the potential to create a lot of scare in the public mind as well.

First, it would be prudent to provide notice to the third party so that the third party is aware that information affecting him is about to be disclosed. The third party can then decide whether to make a representation as to why the information should not be disclosed or as to what safeguards may be appropriate. Since section 11 is intended to address emergencies and hazardous situations, we recognize this notice may be very cursory with virtually no time or opportunity to make detailed representations. It may only be a phone call, but we think that phone call could provide information to the government head or the minister that would be useful in deciding what should be done in this emergency he faces.

Second, section 58 allows heads of government institutions to delegate their powers. We do not believe anyone, other than a minister, should release this type of information under the extraordinary powers that prevail under section 11. This duty should be exercised only by those who are ultimately accountable for the government institution or the ministry, particularly where there is no appeal from this decision to disclose.

Third, the type of hazard or emergency that triggers a duty to disclose information under section 11 also needs to be precisely defined, which section 11 does not do. Therefore, it is subject to some abuse again because there is no appeal from the decision to make the disclosure. On page 17 of our brief, we have suggested some amended language that would make the necessary amendments to the section to keep the spirit evidenced in the section but also remove some of the difficulties we have outlined.

This concludes our presentation. We all three look forward to responding to any questions. We hope we have an opportunity when the section-by-section review of the act takes place to comment further.

Mr. Mancini: I want to refer to your initial concerns with regard to section 17, trade secrets. You have a heading on page 4 of your brief concerning trade secrets. From the way I listened to your brief, this may be your premier concern--

Mr. McFarlane: Yes, it is. Absolutely.

11:20 a.m.

Mr. Mancini: --which is to protect whatever trade secrets you have been able to accumulate or buy over a number of years in the interest of doing business for your company.

I would like you to expound a little further. I looked at what I hoped would have been as nonlegal a description as possible of section 17 in our notes, and it reads:

"Subsection 17(1) is permissive in its application and seeks to protect from disclosure third-party information. Governments for a variety of reasons collect commercial and business information in order to devise or implement public policies. This exemption seeks to protect from disclosure by application of specific criteria or standards as set out in" certain subsections, which are named.

I do not imagine the Coca-Cola company has given the government of the United States or Canada its secret formula. Do you?

Mr. McFarlane: No. Not all information that is given to a government is voluntary. Sometimes you are required to provide information.

Mr. Mancini: I have acknowledged that. What trade secrets have you been forced to give to government agencies?

Mr. Swenor: I can think of one example--it was not the provincial government--under the federal government's old program for the advancement of industrial technology and research grants, where we were involved in the research program for a new product. We happened to be involved in development of the light, rapid, comfortable train, which Via runs. Under those agreements, the government had to be privy to quite a bit of the research. It was to be held in confidence because it was trying to encourage this consortium to develop this new vehicle for sale from Canada.

That is an example--it is perhaps not applicable, but it is difficult to think of another one--where a trade secret, certainly the gist of the invention that was the sizzle on the steak for the LRC, was in the government's hands.

Mr. Lloyd: Perhaps I can add to that. There have been a number of times when companies have phoned CMA and discussed--and again this is under the federal legislation--

Mr. Mancini: I am not interested in the federal legislation. Because we are discussing our particular bill here today, I want to know what trade secrets--

Mr. Lloyd: I was about to give you an example. Doing research projects jointly with the National Research Council, companies would end up being involved in a project where the government would be aware of what their trade secrets were. They were comfortable about doing that because of the type of protection they had for their trade secrets in the federal legislation. With respect to the provincial legislation, I do not think they would have the same comfort.

Mr. Mancini: That still does not answer my question.

Mr. McFarlane: It is hard to just pick one out of the air.

Mr. Mancini: With respect, it is one of your main concerns and you cannot even give us one example.

Mr. McFarlane: We have given a couple; Bob mentioned one.

Mr. Mancini: Under the federal legislation.

Mr. McFarlane: We are continually asked for fuel economy guidelines. What kind of fuel economy are our vehicles going to get in the years into the future? This happened particularly when there was the gas scare and there was a shortage of gas. We were providing that kind of information to various governments. That is very sensitive information about your company; it gets to your whole product line and your development. However, we understood the need for government to use it for its planning, and that kind of information was and is provided.

Mr. Mancini: I thought the fuel economy guidelines were mandated through Congress--

Mr. McFarlane: They are, but not your future--

Mr. Mancini: --or under the North American auto pact.

Mr. McFarlane: The kind of request you will get from a government is, what are you going to be able to do, say, in the years 1988, 1989 or 1990? What kind of economy are your cars going to reach? As I understand it, you are not required to give that under the fuel economy guidelines.

Mr. Swenor: Turning aside from trade secrets, if we cannot give you specific examples right now of what trade secrets might be divulged to the provincial government, the general problem of confidential information is a real one.

I had a recent example about a month ago where the Ministry of Natural Resources was asking for some rather detailed market information--in fact, all shipments, prices and costs--from one of our subsidiary companies that runs a quarry. They said: "This will be a great benefit for all the quarries. We will aggregate the information and it will be held in confidence." They cannot

promise that when this is here because there is not enough protection, and we chose not to give it. It may have been beneficial to us, and certainly to the government, but if you recognize that trade secret disclosure would be damaging, the fact that we cannot come up with specific examples now--

Mr. Chairman: It might be helpful if we tried to get a little more specific. For example, one of the agencies that would be included under the bill would be the Ontario centres for technology, particularly the centre for computer-aided design and computer-aided manufacturing, the robotic centre and all those, all of which are attempting to work directly with industry in producing new product lines.

Your concern would be that you would not feel you could participate in those programs unless you had clearly defined protection for your product lines or for any trade secrets you might have towards any kind of product development. You would feel this bill would not allow you to participate in the CAD/CAM centre, for example, unless we clarified it somewhat.

Mr. McFarlane: Exactly. I agree with you completely. There is already a perception under this bill that there is virtually no protection for a corporation's sensitive, confidential information, particularly trade secrets. There is going to be a withdrawing from the snaring of information that is useful both to corporations and to the government. I would hate to see that happen, but I am afraid it will be the natural result if some greater protection is not provided for the information provided by corporations to the government, sometimes voluntarily and sometimes on a mandatory basis.

Mr. Chairman: Therefore, in response to Mr. Mancini, what you need is some clarification of the nature of the protection offered, what the ground rules are, what information is open to access here and what is protected.

Mr. McFarlane: That is correct.

Mr. Mancini: I want to help you out in these trade secrets because I do not think you should have to give away your Coca-Cola formula. That is why I was so persistent in my questioning. I was surprised, though, that you could not give us any specifics.

Mr. McFarlane: It is not the sort of thing we share as corporations.

Mr. Mancini: You did not have to give us the formula.

You spent quite a bit of time telling us what you did not like about the bill. What did you like about our freedom of information bill?

Mr. McFarlane: We think the whole philosophy is right, as I said in my opening remarks. I believe government should be more open to the public. We hope this happens. You were talking about the wine incident; that is a very excellent example of what we hope to see stopped.

Mr. Mancini: Do you think that would have been grave enough for a department head to have made the information public?

Mr. McFarlane: Yes.

Mr. Mancini: In your mind, you could pretty well decide what would be grave and what would not be grave.

Mr. McFarlane: "Grave" is a difficult to word.

Mr. Mancini: But you feel the wine situation was grave; you have attached some kind of definition to it.

Mr. Swenor: There is another distinction. The government is free now, and would be later, to divulge information gathered by the Ministry of the Environment or by the Ministry of Health about a product or a company. Our main concern is that they would get something from us in confidence and then give it out. That is what we would like to know about.

You talked about the wine incident, but I am not sure how much of that information came from the companies. I would think it was developed independently. That is clearly not as great a concern.

What we are worried about is that the government comes to us in a voluntary and trusting relationship and asks for information, we give it with the confidence it will be handled delicately, but then it is just thrown out.

11:30 a.m.

Mr. Lloyd: We have some concerns about the term "grave." We recognize the need for section 11, but we think that rather than leaving it up to the courts to determine when that section is going to be triggered--and they will interpret what "grave" means if the Legislature does not do it for them--it would be a lot better if the Legislature did that.

We have suggested some wording that would be more appropriate to describe the kind of hazard or emergency situation. We set that out on page 17 of our brief. What we are suggesting is that this section be triggered when you have a situation, and the words we have chosen are, "that requires immediate disclosure to prevent a significant danger to health, safety or the environment."

That is the kind of guidance I think the Legislature would want to give rather than to leave it as subjective and imprecise as the term "grave" is.

Mr. Warner: That was a very thorough presentation, and I appreciate it. It was extremely well done. I understand what you are saying about the trade secrets, and I have no problem with that.

As a candid observation, if all the car manufacturers had been privy to the same plans, maybe no one would have built the Dodge Omni. I would have been eternally grateful for that.

Mr. Mancini: My wife has a Dodge Omni.

Mr. Warner: That is a trade secret that should have been shared with everyone in the public interest.

Mr. Chairman: What are you smiling about?

Mr. McFarlane: I am not saying a word.

Mr. Warner: I do not blame you; I would not either. I know I had some words to say about it.

Mr. Mancini: Is the car paid for? You can get good money for it now. What are you talking about?

Mr. Warner: The Omni?

Mr. Mancini: Yes.

Mr. Warner: We do not have the time here to get into the list, but it is a daily problem.

The last comment you made with respect to sections 11 and 17 does provide a bit of clarification, and maybe it helps you as well. There is a distinction between information that has been gathered by a government agency and information that has been voluntarily given to a government agency by a company or a corporation.

Mr. McFarlane: Under some confidential auspices.

Mr. Warner: Right. The way I see that section and its purpose is that, unfortunately, over the years information collected by a government department has been sat on in cases of public safety.

I can think of a plant in my riding where unsafe working conditions existed for a long time. The government was aware of it, but no action was ever taken. Then we had an explosion, the result of which was that five men were very seriously injured and one nearly died. That condition had been allowed to exist for a number of years. The Minister of Labour was aware of it.

Under this type of legislation the employees in the plant, knowing that an unsafe working condition existed and knowing that nothing was being done and that the government had the information, could have applied to receive the information and could have forced an action.

This type of information is different from information that a company provides voluntarily, as in the example our chairman cited with respect to the robotics centre and so on. That is a different type of situation. Keeping that in mind, can you give me more specifics on what kind of situation you would envisage there would be a difficulty for your members under section 11?

Mr. Swenor: Maybe I can speak to try to clarify section 11. Before, I talked about the main concern being information that was provided by business. The submission goes a little further and asks that, if you are affected, you should be contacted. I do not think we want to get too hung up with section 11, because I do not think the CMA is asking for too much. We are saying that, where practicable, the affected person would like to know and have a chance to comment on what is going to be released.

Mr. McFarlane: You asked for a specific example. Let us say you had a phone call that there was something defective in the steering mechanism of a GM Pontiac 6000 and the head decided it was imperative that it get on some newscasts. If it got on the 11 o'clock news that all steering in the Pontiac 6000 was defective, that could obviously create a lot of havoc for the public and a lot of grief for us.

All we are saying is to give us a chance to respond to that kind of allegation before it becomes public because sometimes you cannot recover from those kinds of taints. The car may be perfectly good and never was defective.

Mr. Warner: Could we follow through on that example for a moment? What you are suggesting under your model is that if that were the situation and there was a complaint, the head of the department or the commissioner

would contact you for your response. If the head was not convinced by the answer you gave, would that person under your scheme be perfectly at liberty to release the information publicly?

Mr. McFarlane: Yes.

Mr. Lloyd: The only qualification would be to make sure that it was the minister and not someone lower down who had been delegated to exercise that extraordinary power.

Mr. McFarlane: In other words, popping off at a low level.

Mr. Lloyd: There would be political accountability for mistakes, and we think that would prevent mistakes. As I said before, we want their judgement to be more of a directive than just looking at the word "grave." We are suggesting more specific wording that they should be taking into account. With those qualifications, yes.

Mr. Warner: We run into the same problem with all legislation. When you put in subjective terms, it becomes very difficult. The interpretation, by whomever has the power, will be a difficult one. "Grave" is obviously one of those terms. If you substitute something else, you may have the same kind of problem, but your point is understood. Thank you very much.

Mr. O'Connor: Thank you for your brief. I can agree with much of what you have suggested to us, particularly in the area of appeals. As we have discussed in the past, I had some difficulty, which I expressed this morning, with section 11. However, having heard you and having read your brief, and having heard the responses to Mr. Warner's questions, I think you go a long way to relieving some of the difficulties I initially expressed to you when you suggested significant amendments to section 11.

As long as we are left with the position where that real emergency, which simply because of time may preclude notification to anybody in the circumstances, is left open and the information can be made public, which your draft seems to do with the provision of notice only where practicable, I could go along with that.

As an example, since we have been reaching for examples, I think of the polychlorinated biphenyl spill on the Trans-Canada Highway last year. As I understand it, the owner-operator of that truck was a small independent company in Alberta. If it were required that the person in charge be found to notify, there might have been some difficulty; yet there was a real health hazard to the public, which had to be notified as soon as possible.

Your difficulty with the political requirement to make the statement may be alleviated somewhat if you read the definition of "head," which cannot include a lower-down functionary, as I think you described him. It has to be either the minister or the person in charge of an institution.

Mr. McFarlane: But that power can be delegated under section 58.

Mr. Chairman: At any rate, your concern is not that this would be shared among three or four senior people; your concern is that someone much lower down in the ranks with much less accountability would release the information.

Mr. McFarlane: Exactly. There is that delegation of power, and it could be delegated to a fairly low level.

11:40 a.m.

Mr. O'Connor: With a minor amendment to section 58 dealing specifically with section 11, we might alleviate that problem. On balance, I can agree with and support your version of section 11 as being not a significant detractor from the section 11 set out in the bill, but with the significant improvement, as Mr. Lloyd said, of taking out that subjective term "grave" and defining it a little better than it is in the act. Thank you for your submission.

Ms. Gigantes: Grafftey made the same point about "head." It seems to be quite clear in the legislation, even with section 58, that when you get to a revelation under section 11 you are going to be dealing with the top person in that organization. However the delegation is authorized, nobody who receives that delegation is going to act under section 11 without checking it through the authority that has been given to him.

Mr. McFarlane: Grafftey did not say that.

Interjection: The bill would revoke that.

Mr. Swenor: Let us make sure.

Ms. Gigantes: Let me ask you to be serious. Anybody who did that would be in threat of losing a job. That is quite clear. You do not survive in an organization unless you take these kinds of regulations very seriously. I do not think we have seen any experience anywhere in the world under access to information legislation that indicates bureaucrats have given information under access too freely. Quite to the contrary, the congressional hearings on the operation of the American system indicate there has been bureaucratic stalling on the operation of their legislation.

Mr. McFarlane: I agree with you that happens, but I also suggest the American experience says that unbelievable information about corporations has been disclosed, maybe not for any malicious purpose but just because of the pressure of time, etc. Companies have refused to bid on contracts as a result of the fact that information that had been submitted previously to the government had been disclosed. There are instances in the United States where there is tremendous--

Ms. Gigantes: As you know, in the United States, everything gets litigated. That is not the process we go through here, which has some benefits.

I go to section 17 and compare it to subsection 20(6) in the federal legislation, which you raise as what should be our model. Subsection 17(1), as I read it, says, "A head may refuse to disclose a record...." You are aware that the Attorney General (Mr. Scott) has suggested it will read, "A head shall refuse to disclose a record that involves trade secrets." One reads it that the head shall not, may not, cannot disclose a record unless subsection 2 comes into play, unless there is a clear public interest that "outweighs the interest of any person, group of persons, or organization" in the continued confidentiality of the information.

That seems pretty clear to me. That says to me that if I am a head, as the Attorney General is proposing to amend it, I shall not disclose trade secrets unless the disclosure outweighs the interest involved. When you look at subsection 20(6) in the federal legislation, you are looking at a clause that says "the head of a government institution may disclose," which is not as

strong as the Attorney General is proposing to make subsection 17(1). It is "may," as is currently proposed in our bill, not as the Attorney General would amend it; so you already have something tougher if the Attorney General's legislative proposal is followed, except if we look down at the fourth-to-last line, we see that it says, "such public interest in disclosure clearly outweighs in importance any financial loss or gain." It seems to me that what we are talking about here, and the real thrust of your complaint, may be that we do not say "clearly."

Mr. Lloyd: If I could comment, I have three points I would like to make. The "shall" that the Attorney General has indicated he wants to insert in subsection 17(1), which we support, should not be read in conjunction with subsection 20(6) in the federal act but with subsection 20(1). Those are the two basic preambles for the section. If the Attorney General makes a change, as he is suggesting, then subsection 17(1) in your bill, like subsection 20(1) in the federal bill, will say "shall refuse."

The public interest override test is really a "may" in both these situations, in subsection 20(6) in the federal bill or in subclause 17(1)(b)(ii) in the Ontario bill. The strengthening that the Attorney General proposed with "shall" brings him up to but does not surpass what we have in the federal bill in the preamble.

Ms. Gigantes: Yes, I see your point.

Mr. Lloyd: We think the wording of the public interest test in the federal legislation is preferable for a number of reasons.

First, there is a working track record with it and there do not seem to be major complaints that it is a disaster. For purposes of consistency and for purposes of going with something that seems to be working, we would suggest it would be good to model it after the federal bill.

Second, it is more precise. The insertion of the word "clearly," as you have identified, is something that gives us comfort. Also, the precise definition of the type of public interest concerns to be weighed is in the federal subsection 20(6); it is not in the Ontario subsection 17(2). Subsection 20(6) talks about certain types of public interest: public health, public safety and protection of the environment. The provincial bill is nebulous. It is any public interest; we do not know what that means.

Third, the federal public interest override in subsection 20(6) applies to a whole host of confidential information but does not apply to trade secrets. The federal bill recognized, and there was a lot of debate on this, that a company should not be subject to a decision that would allow the release of a trade secret, because the danger would be far too great for the company.

When you are talking about the lifeblood of their operations, their trade secrets, what the CAD/CAM centre in Ontario finds out about, what the National Research Council in Ottawa finds out about because of co-operative action, or perhaps what the Ministry of Industry, Trade and Technology finds out about Hyundai or someone locating or proposing to locate a plant here, should not be subject to a decision that would allow its release.

Ms. Gigantes: Where is the trade secret involved in that?

Mr. Lloyd: This returns to Mr. Mancini's question of some specific examples, the ones where we are talking about co-operative action between a

company and a CAD/CAM centre or NRC. It is fairly obvious where the trade secret would be.

Ms. Gigantes: Yes, but the location of a plant?

Mr. Lloyd: I do not think the location of a plant is a trade secret. However, the kind of plant, the kind of car or thing we are going to build and the production volumes could involve important trade secrets to a company. In other areas we could have responded that trade secrets could come about in information about the constituents of ingredients in chemicals that is shared with the government in assessing them. Those could be trade secrets as well.

11:45 a.m.

Mr. Warner: How would they be released? Section 17 says you shall refuse unless the public interest in its disclosure outweighs the interest of the person, group or organization. I fail to understand under what set of conditions the head would feel compelled to release the trade secret, the scientific secret or the technical, commercial or financial information. Surely the protection is built in when you change that from "may" to "shall."

Mr. Lloyd: The point is, you feel in your mind right now, and we hope that is the situation, that the head could not conceivably think of why he should release, or that there would be a public interest override compelling him to release, a genuine trade secret. We think that is the case too. However, we want to nail that down by not allowing him the discretion in that narrow range of confidential information that is trade secrets, so that he would not have that balancing act to do.

Mr. Warner: Do you want to make that wording more specific than subsection 17(1)?

Mr. Lloyd: No, 17(1) is fine in concept. The difference between the Ontario and the federal proposal comes in the public interest override, subsection 17(2) in your bill as compared to subsection 20(6) of the federal bill. The federal bill does not subject trade secrets to the public interest override. We suggest your legislation should do likewise.

Ms. Gigantes: There are some trade secrets having to do with the constituents of products or the kinds of arrangements that may be made, competitive arrangements, between a government and one car manufacturer for a proposed location--how many jobs, producing what line of vehicle and so on--in which the public does have an interest. When it comes to subsection 17(2), what you seem to be suggesting is that you would like to see it limited specifically to public health, public safety and protection of the environment, though you still want to argue about section 11, which deals with those elements. I put it to you that there are a number of matters besides those on which information should be available in the public interest.

Mr. Lloyd: I think the concept in section 11 is that in an emergency situation--

Ms. Gigantes: No, it does not say "emergency." That is another thing that bothers me about the discussion here. Mr. McFarlane suggested that section 11, if I quote him properly, "is designed to address emergency or hazardous situations." If something has gone for eight years, is it an emergency? Does the head who discovers it has gone on at certain levels of his ministry have a duty to disclose it? Is it an emergency after the problem has existed for a long time? I wonder about that.

Mr. Lloyd: The question is not so much how long it has existed but whether there is imminent danger. That is why we specified the type of wording we suggested.

Ms. Gigantes: Is it imminent danger when we have been drinking wine with ethyl carbamate for 10 years? How many bottles do you have to drink per year? Is it imminent danger? Do we let the public know? Is there an obligation for the government to let the public know?

Mr. Lloyd: I think in that instance there was clearly an imminent danger.

Ms. Gigantes: Then you have to be careful about what words you would like to slip into section 11 or you will not find out.

Mr. Lloyd: I think that situation would pass this test.

Mr. Swenor: I interjected before and I see the same thing happening. I do not want to see the discussion go as the last presenters did. We are not arguing to get rid of section 11. We are asking for a simple thing, if it is practicable; that the person to whom the information relates be contacted beforehand because he may have something to add to the question. We are not saying take section 11 away. You are saying we need that for the wine; we are saying, if you need it for that kind of situation, leave it, but please give people a chance.

Ms. Gigantes: Let us take an example where there is imminent hazard and an emergency situation, and somehow it is practicable to notify the third party whose trade secret this is. Then you say to us it should all go to court; it should be wide open to court.

Mr. Lloyd: No, we did not say that.

Ms. Gigantes: We have heard that on the same basis this morning. I suggest to you the representations we had from the Board of Trade of Metropolitan Toronto could--

Mr. Chairman: Could I get clarification? You are not making that request. You are asking for notice, but not provision to go to court or to block it.

Mr. McFarlane: In the interests of everyone, surely if you have a grave hazard, it behooves everybody to get as much information as possible centred on the problem. The third party that developed the product presumably knows a considerable amount about the product and is in a position to provide the government with useful information. We responded to this gentleman here when he said, "Once you have had that opportunity, are you going to object to the release?" We said no.

Mr. Lloyd: That is made quite clear in our brief.

Mr. Chairman: That is a distinction from previous submissions.

Mr. Lloyd: On page 18 in our brief, we say that the addition of subsection 11(5), which is our notice provision, does not require a hearing but provides that representations made are considered. Anticipating this concern, we wanted to be very clear that we are not talking about court proceedings or a hearing.

Ms. Gigantes: Then we had better put that in, if we are going to add your amendment, because everything in this legislation is reviewable.

Mr. Swenor: No. Section 11 says, "Despite any other provisions of this act...." Section 11 stands alone.

Ms. Gigantes: Perhaps we could get some help from the ministry on this, because my understanding, from what the Attorney General has been saying, is that there would be review on matters of fact and process on all sections, as the bill stands. Is that correct?

Mr. Chairman: When we go through clause by clause, we will be seeking quite a bit of clarification on this.

May I pursue a slightly different point? To take out the emergency part of all this or all the grave public danger, what would your position be on disclosure of conditions of, for example, an automotive company locating in Ontario? Most of us would hold that all the conditions of that company relocating here ought to be a matter of public knowledge, whether that was some agreement in conjunction with the Ontario Robotics Centre, with job training or whatever it might be. In other words, the whole agreement should be a matter of public knowledge if it involves the Ontario government. There should be no secret deals about what we will do and what we will market. What would be your general position on that type of disclosure?

Mr. McFarlane: To be frank, we would lose some investment in this province. I say that because we have had some discussions with other companies in other countries about possible ventures in Ontario and Canada. It is clear to me that they are very protective of their information. I doubt they would be prepared to enter into the joint venture on the basis that everything was going to be agreed upon, working conditions and the location of the plant. They would say, "Hey, we do not want to do that."

Mr. Chairman: We are going to have some practical problems as we get into more and more of a joint venture concept, where a private-sector corporation and the public are joint participants in a scheme of some sort. It becomes very difficult for the government, in my view anyway, to get involved in what amount to secret deals. It has to do with this whole concept of joint ventures and how our society would accept that.

This committee, for example, has seen some government agencies which were hot and heavy into new technology developing things which may not start out, frankly, as the corporation's trade secrets. The corporation does not know what the hell it is doing for starters, but in developing some new technology in conjunction with a government agency, it gets something which, maybe not right now but two or three years from now, is marketable. How do we do that? That has been an ongoing problem for us. How do we justify expenditure of public funds in conjunction with the private sector when the public has no right to know how the moneys were spent or what products might be developed? That is a very sticky area for us.

Mr. McFarlane: I understand the problem. I am truly concerned, though, that if it is too public we can lose out on the investment entirely. That is not good either.

Mr. Chairman: Let me read to you from a speech by the president of General Motors of Canada, who says that the private sector has the right to come into this country and invest a lot of money. It does not like it a lot

when somebody else from another nation comes in here and gets a whole lot of government grants and assistance from the government in plant location, labour relations, training and new technology. "What the hell are we doing as a corporation competing with not just our private opposition but with the private opposition in conjunction with the government? How the hell do we justify spending \$2 billion in our facility when somebody can come in from Korea or Japan or wherever, spend \$200,000, pick up another few million dollars from the federal government and a little bit more from the provincial government, get a break on the land costs, a break on the job training and a break on the technology? What the hell are we doing spending our money here?" That poses a major problem for us.

Mr. Swenor: I would like to point out the distinction that if the government was entering into a deal with Nissan or somebody, all of the government's deliberations should be public. To the extent that they include confidential information supplied by Nissan, I do not think it is fair to disclose information that Nissan may have disclosed to the government in confidence. If the government talks about the potential returns to the economy on employment and whatever else entered into its deliberations, I agree there should not be secret deals. That should be public. We are talking about the protection of business information that is given on a confidential basis. You can get the kind of disclosure that you need to protect the public in those deals and still not be breaking a confidence.

Mr. Chairman: I have no interest in how they put together their widget. I have no interest in the secret ingredient in their widget. I have a whole lot of interest if Ontario spends \$2 million to get them to build a widget plant here. I want to know all the terms and conditions under which we funded International Widget's arrival in Ontario,

Mr. Swenor: So do I.

Mr. Chairman: I do not think we are in total disagreement here. I think we have a little work to do on massaging definitions and things.

Mr. Treleaven: I have one thought going back to the Innovation Development for Employment Advancement Corp., which we reviewed a year and a half ago, and your personal difficulties with stopping short of demanding details from the IDEA Corp. It might be slightly different here in that the government was a direct participant, a direct joint venture participant, with the IDEA Corp., with the private sector. It might be a little different here because the information is coming to the government, not with it as a participant but as a bystander. It may be different. I am drawing a bit of a distinction.

Mr. Chairman: We might make that distinction, but I would also point out that with the computer-aided design/computer-aided manufacturing centres, with all the development of new technology in the automotive industry, there is a lot of that where the private sector cannot find the door handle. The public sector comes in and provides some facility which does help it to find the door handle, so it is not arriving with a secret formula for a product. They are arriving with a problem. The government participates in a funding process which helps the company to resolve that problem. That is a slightly stickier area.

Mr. Swenor: Typically, those deals are made up front, as to who is going to have rights to the technology.

Mr. Chairman: Exactly.

Thank you very much for appearing before us. The committee stands adjourned until two o'clock.

The committee recessed at 12:04 p.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES, BOARDS AND COMMISSIONS
FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

WEDNESDAY, MARCH 26, 1986

Afternoon Sitting



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Eichmanis, J., Research Officer, Legislative Research Service

Witnesses:

From the Canadian Civil Liberties Association:

Borovoy, A., General Counsel

From the Ontario Association for the Mentally Retarded:

Beatty, H., Legal Counsel

Carden, S., Community Living Adviser

From the Insurance Bureau of Canada:

Bossin, A., Counsel

Beatty, G., Automobile Manager, Personal Lines Division, Royal Insurance Canada

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS
AND AGENCIES, BOARDS AND COMMISSIONS

Wednesday, March 26, 1986

The committee resumed at 2:15 p.m. in room 228.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
(continued)

Consideration of Bill 34, An Act to provide for Freedom of Information and Protection of Individual Privacy.

Mr. Chairman: This afternoon the first witness is Alan Borovoy from the Canadian Civil Liberties Association. You have been here before, so I think you know rather well the routine of making your views known and then providing an opportunity for members of the committee to ask a few questions.

CANADIAN CIVIL LIBERTIES ASSOCIATION

Mr. Borovoy: Thank you. I have with me, on my right and your left, that is physically rather than politically--

Mr. Chairman: There is no one on my left politically; you know that.

Mr. Borovoy: I have heard some rumour about that.

This is Erika Abner, our research director. On my left and your right is Marie Moliner, a field representative.

I should point out, as a necessary disclaimer, that within the time our meagre resources allowed, we have not had the opportunity to give this bill the intense scrutiny we would have liked. If there are additional things that our initial scrutiny may have missed, I trust that if we attempted to communicate with you in writing, your interest would be no less great than it is now.

I would like to start with an item that came to my attention rather late last night in the form of a letter from the clerk of the committee--I understand he sent it earlier to my office, but I did not get it until late last night--incorporating some recent amendments the Attorney General (Mr. Scott) had introduced.

One of them deserves special mention here. That is the one where he lists the agencies that he intends to have covered by regulation under this bill. That is certainly preferable to not listing them because when you do not list them and you leave the power to regulation, you are asking the Legislature and the public to buy a pig-in-a-poke. The difficulty you are left with is that even if this regulation applying the legislation to all those agencies is enacted, what happens if a new one is created between now and then?

Mr. Treleaven: Through which someone would likely put quietly different things.

Mr. Borovoy: I should point out that was not solicited. It is, however, welcome.

Mr. O'Connor: Would you like to sit over here, Alan?

Mr. Chairman: They are what you call born again, Alan. Forgive them.

Mr. Borovoy: I will leave the partisan comments to you fellows.

I notice that in the comments of the Attorney General he said the criteria he was using for determining what agencies should be included were the ones the Williams Commission on Freedom of Information and Individual Privacy had recommended. Those criteria looked to us to be rather sensible. On that basis, we suggest that rather than leave this to detailed regulation, and I have no objection to a detailed regulation, let the criteria be put in the statute so that if new agencies are created, a member of the public could appeal a refusal on the basis that the agency was not explicitly listed. He could refer to a statutory right by which the criteria for inclusion are the basis rather than a regulation setting out the named agencies.

I go from that to the exemptions that exist for public access. The first is section 13. If I read the words correctly, I notice there is a category of information in section 13 that will probably not be included for compulsory access, which in our view should be included. Suppose there is expert advice as to the likely consequences of various policy options that are adopted. To make it a simple example, suppose a doctor says, "If you do X rather than Y, the following is likely to happen." Even if the government is reluctant to include for compulsory access the doctor's ultimate recommendation, there is no reason not to include his predictions of fact as to what the likely consequences are of going one way rather than the other. That is the kind of thing over which there should be public scrutiny. That is the first thing, and if I read that correctly, it is likely not a category of information that could be compulsorily disclosed.

I go from that to section 14, the law enforcement exemptions. Clause 14(1)(c), if my memory serves me correctly, is the one that would exclude material that would reveal either current or likely future investigative procedures. In our view, that exemption is needlessly broad. There might well be investigative procedures that would not hurt anything if the public knew about them. In some cases, it might be beneficial if the public knew about them. We suggest this exemption be narrowed so it applies only to procedures the disclosure of which could reasonably be expected to harm some legitimate law enforcement objective. Otherwise, there is no reason to exclude that.

The second is clause 14(2)(a). It talks about--I am trying to do everything from memory and it does not always work--a report that is prepared in the course of law enforcement investigation or inspection. We have the same submission to make about this as we did about the other one. Not all reports prepared for law enforcement or inspection purposes would hurt any public interest if they were disclosed. On that basis, we suggest that exemption be narrowed so that it would apply only if the disclosure could reasonably be expected to harm some overriding public interest, such as--you may wish to articulate it.

I go from that to section 15, the in confidence exemption, where the head of an institution is given the power to withhold from public scrutiny material the government might have received in confidence from another

government. Understandably, when the government gives its word, there is a real problem about forcing disclosure, because the government's credibility could be damaged if other governments dealing with ours could not trust it.

We suggest a compromise kind of proposal. Many of us are quite sceptical. We do not really know a lot that goes on in the bowels of government, but we are quite sceptical that governments may too often enter promiscuously into confidence arrangements with other governments. As a result, if a case comes up and the government invokes that exemption, while the commissioner cannot be permitted to order the disclosure, we suggest he be mandated to make a finding about whether, in his or her view, depending on who the commissioner is, the government should have entered into that in confidence arrangement.

Thus, even though the material is not ordered disclosed, there would be on the public record a decision by the independent official we are supposed to trust that the government should not have entered into that arrangement--no overriding public interest was served--and that acts as a pressure on the government. We think the knowledge it is subject to that kind of public finding would act as some deterrent against entering unduly into these kinds of arrangements.

I go from section 15 to section 19, the solicitor-client privilege. The problem is that it is often misstated and misapplied. The privilege belongs not to the solicitor but to the client. It is therefore the government as client; it is the government's privilege. On that basis, we suggest that not every communication that could be characterized as a solicitor-client privilege ought to be withheld from public scrutiny. The real question is whether the government's tactical interest in secrecy with respect to a communication outweighs the general public interest in scrutiny. That would depend on the nature of the communication; it would depend on the timing.

For example, if the communication was made in contemplation of some imminent litigation, there would be a strong argument for withholding it from public scrutiny. On the other hand, if it was made when no such litigation was planned or even contemplated, that would be a very strong argument for letting the public look at it. Therefore, we suggest that exemption ought to be recast to incorporate these concepts. There should not be a broad cloak of immunity for anything that might otherwise be considered a solicitor-client privilege.

2:30 p.m.

I go from the exemptions to mandatory access to the exemptions for the protection of personal information. The key thing I would like to address is the exemptions on the prohibition against disclosing personal information that the government is holding on identifiable individuals.

First, in section 38 there is the understandable provision that material could be released with the consent of the affected person. Obviously, there is no difficulty with that. The difficulty may be in satisfying ourselves--particularly when there are a number of dependent individuals, such as welfare recipients or persons like that, who are asked to give consent for something--that we are dealing with a truly free and informed consent. As a consequence, in our view, some safeguards ought to be written into the bill to ensure that the consent is truly an informed and free one.

To give some examples without trying to exhaust them, it should be not an open, general consent but rather something in writing specifically addressed to something specific. There might be some requirement that the person be advised that, if he withholds his consent, there would be no adverse consequences with respect to the information or the purposes for which the information was collected. There might even be, in the case of acute dependency, some provision for subsidized legal aid so that the person could get legal advice about whether he ought to grant his consent. That kind of thing is not in the bill and, in our view, some protection of that kind should be there.

I go from that to clause 39(1)(d), which is the one that deals with a law enforcement agency disclosing information pursuant to some agreement with a foreign law enforcement agency. Where agreements are entered into, it is awfully hard to say our government should not live up to its agreements, but I do not think we need to be confined to simply trusting government to do what it likes and not have any kind of remedy against it.

We would suggest as a safeguard against the government entering into some dubious agreements--if indeed that has happened--that where it does not offend any other provision of the law, there be mandatory publication of all such agreements so the public can look at them and make some decision on whether our law enforcement agencies should or should not enter into those arrangements.

Second, where material is disclosed pursuant to such an agreement, the head of the institution should be required to inform the commissioner and the commissioner should be required to audit these things and ultimately report on them, if not in detail, at least in principle so that this becomes a matter of public record.

In this connection as well, where an agreement is not subject to disclosure, the commissioner ought to be told about it in any event and ought to be mandated to make some judgement that then is reportable publicly concerning whether those agreements not reported publicly were proper or improper from his point of view--in other words, some kind of pressure built into the system against the unwarranted involvement in such agreements.

The last one I would like to mention in this connection is clause 39(1)(e), which permits the head of an institution to disclose information if it will aid a law enforcement investigation. In our view, this is a needlessly wide provision and is needlessly devoid of adequate safeguards.

An interesting thing to reflect upon is that as a general proposition in our society, before government can invade residential privacy there has to be a judicial warrant. However, before government can invade informational privacy, there does not have to be any such protection.

We suggest that there be three safeguards. Material should not be disclosable to law enforcement agencies unless (1) it is explicitly provided for by some statute, which would give the public the security of a public debate before exceptions are made; (2) there is a judicial warrant or something akin to a judicial warrant, an independent assessment as to whether the material at issue ought to be disclosed under the terms of the law if there are reasonable and probable grounds to believe that it is necessary to or important for a law enforcement investigation; (3) there is imminent peril to life or limb where one cannot wait for the warrant-granting procedure to occur. In our view, these three conditions ought to be put into clause 39(1)(e).

A final point to make about the bill concerns the concomitance of independence for the commissioner. The commissioner is the independent official whose judgement ultimately will determine whether material will be released or withheld from public scrutiny. The way the bill currently provides for the commissioner, the appearance of independence may be compromised. It may be compromised by the fact that the commissioner is appointed for a five-year term and is subject to continuing reappointments for five-year terms. Five years in a person's work life is a rather short period.

If a person takes a job such as that and then is looking for reappointment, there is a great risk that he will be vulnerable to the perception that he is currying favour with the very government that has to decide whether to extend his tenure. Our position would be that since the government is always going to be one of the parties, the appearance of independence will be rather compromised unless some changes are made for the tenure of the commissioner. For example, we suggest a substantially longer period, or a somewhat longer period in any event, and not make him subject to reappointment, perhaps with adequate pension arrangements so that one need not worry that the commissioner is going to be compromised.

Mr. Mancini: Can he find a job afterwards? What about social security?

Mr. Borovoy: I have reflected about that.

Interjection.

Mr. Borovoy: As a matter of fact, that is an interesting point. In any event, our view is that longer periods and not subject to reappointment are ways of improving the official's tenure. All of which is as usual, if not always, respectfully submitted.

Mr. Chairman: Very impressive.

Mr. Borovoy: Thank you, Mr. Chairman.

2:40 p.m.

Mr. O'Connor: Thank you, Mr. Borovoy, and the Canadian Civil Liberties Association for a very well presented brief. It was very interesting, particularly as it was delivered without a note, quoting all sections and subsections accurately. It is a pleasure to hear from you.

My interest is with regard to the ABCs. You have presented to us one of the difficulties we have expressed; that is, the creation of new agencies, boards and commissions and whether they would then be included.

I wonder whether you can comment for us on the suggestion that perhaps the government has gone about this the wrong way. It has chosen to follow what we call the opting in route; that is, specifically, to name the agencies, boards and commissions that will be included. Perhaps the preferable way to go would be the reverse, the opting out route; that is, to declare simply that all agencies, boards and commissions that fit a definition.

The definition used in the Williams report, and which it recommended as the method to follow, states--and I might for the record indicate--all ABCs "a. financed exclusively from the consolidated revenue fund of the province of Ontario, or b. controlled by the government either through ownership of 50 per cent or more of the issued and outstanding shares in a corporate body or

through having the power of appointment of a majority of the board of directors or other governing body or committee of the institution in question."

That would then place upon the government the onus of justifying those names that would appear on the list as not being subject to the provisions of this legislation.

Rather than the very lengthy, 150-item list with which we have been presented, we would expect that the opting out procedure would produce a very short list of ABCs that are not included. That would be a more preferable way to go because it would also take care of the problem you have suggested of having to keep up with newly created boards and commissions. Can you comment on that and tell us whether you would be in favour of that approach as an extension of what you have suggested?

Mr. Borovoy: If we were in court now, I would say, "Precisely, my Lord." You have put the proposition very well. I do not think I could improve upon it. I notice from the comments of the Attorney General (Mr. Scott) that he was basing his list on the Williams commission recommendations. That being the case, it would be very sensible to enact the Williams recommendations as the statute. Then if they want to exempt something, we can have a debate about what ought to be exempted. I have no trouble with that. That is exactly the way it should be done.

Mr. O'Connor: Thank you.

Mr. Warner: I have a couple of items. First, I appreciate your presentation. As usual, it is clear, succinct and very helpful.

Mr. Chairman: Unlike your question.

Mr. Warner: Unlike the question--you finally arrived and you are finally awake.

As we go through these presentations, I find it easier to see what changes should be made if I can try particular examples and see how they fit. We can return to clauses 14(1)(c) and 14(2)(a), as you mentioned. What came to mind when you were going through your explanation was, reflecting back to the rather bizarre situation we had a few years ago, when the Royal Canadian Mounted Police decided they could help themselves to people's mail and do all sorts of weird and strange investigative things which, as we found out later, they really had no business doing.

If I substitute the Ontario Provincial Police in a hypothetical situation, and the bill is left as it is now, would it be your understanding that the OPP could do the very thing that the Mounties did a number of years ago: opening mail and seizing lists of suspect people, who at least one or two people felt were threats to the society at large? I am sure my name and the names of some of my colleagues appear on that list. Would it be possible, under the present wording, for the OPP to be able to do that sort of thing and have all their investigative procedures remain secret?

Mr. Borovoy: The latter part of what you are asking is the operative part. This bill does not speak to what they may or may not do; it speaks only to what may or may not be compulsorily disclosed. I would have to answer you in more general terms because the question is really a more general one. It would be easier to cover up if the bill remained in its present form. It would be easier to learn about the truth if the bill were more severely narrowed in the ways we suggest.

Mr. Warner: That is really what I was getting at. If there were any suspicion at all about inappropriate behaviour by a law enforcement agency, if the bill were amended by narrowing it, the general public would have a better opportunity of finding out what had happened and what procedures were followed.

Mr. Borovoy: That is the best way to answer you. Without a detailed, specific situation, it is hard to say where and now. It obviously follows that it is easier to learn of it the narrower that exemption is. As I have put to you, if one takes that there is no legitimate public interest served by an exemption as broad as this and that it could be narrowed to deal only with discernible harm, then why not do it that way?

Mr. Warner: Our experience in this country shows that would be a more preferable route.

The second and last question is on something you did not touch. I would appreciate your opinion. Unless I have misread the bill, there is no automatic route to the courts where someone is dissatisfied with the process through the commissioner's office. Is that a weakness in the bill?

Mr. Borovoy: It is not necessarily a weakness. I am not one of those who believe the judiciary has to be involved in every bit of adjudication that takes place in our society. There are many other tribunals that have proven to be very competent and have been better than the courts in numerous situations. For example, if I were to say there have been arbitration boards in labour disputes whose adjudications have been far superior to what one often gets from the courts, that would be the short answer.

I suggest the way to deal with that is to improve upon the concomitance of independence for the commissioner. Once we are satisfied the commissioner has all the adequate components of independence, there is not the same need for recourse to the judiciary as there might otherwise be.

Mr. Warner: On your last point, would you draw a parallel with how the Ombudsman's office is established and the position of the Ombudsman? Is that of sufficient independence?

Mr. Borovoy: I think so. If I recall, is that not a lifetime appointment? I am sorry; it is a 10-year appointment. Is it renewable or nonrenewable? I do not recall offhand. If you are asking whether an eight-year or nine-year nonrenewable appointment might be adequate, that might well be.

Mr. Warner: Your point about the public perception is a very accurate one. I think the public perception of the Ombudsman's position is that the office is independent.

Mr. Borovoy: Yes.

Mr. Warner: It is not subject to the whims of daily political life.

Mr. Borovoy: That is one of the reasons; it is because of these criteria. If the member here could guarantee him a job after he left office, we would have solved the problem completely.

Mr. Warner: Mr. Mancini is going to do that.

Mr. Mancini: Then it would be the same problem: He would be beholden to someone.

2:50 p.m.

Mr. Treleaven: I would like to follow up on the comments you made about consent of a third party; about a person being asked to consent to disclosure of personal information. You were concerned about the independence of his consent. You suggest he seek a legal aid certificate to try to get advice about independence. If I suggest to you it is probably a six-month haul to get a legal aid certificate, and probably a negative answer in the end, how does that help the man give that consent?

Mr. Borovoy: You might simply provide that the legal aid would be more expeditiously forthcoming for that limited purpose. We are talking about a pretty simple matter, I would think. If you are talking about some of the people whose relationship with government is a rather acutely dependent one--like the welfare recipients; that may be the best example--then just provide that they can go to a lawyer and do it. One need not have that problem. It is not beyond our wit to provide for an expeditious remedy in a situation like that without having to go through the normal procedures.

Mr. Treleaven: In theory I agree with you, but in practice my experience is that there is no expeditious way of getting legal aid certificates in civil matters. I have not seen it in my years. I would like to think you are correct.

Mr. Borovoy: I would suggest you might not do it via the route of a certificate, for example.

Mr. Treleaven: Do you mean to do it like a duty counsel type of approach?

Mr. Borovoy: You might have something like that. Sure.

Mr. Treleaven: Okay.

Mr. Borovoy: There are other arrangements that could satisfy this objective so you are not put in that situation.

Mr. Treleaven: Maybe Mr. O'Connor, who has practised more recently, has a supplementary on that. No.

Mr. Borovoy: The question is, has he gotten legal aid?

Mr. Treleaven: He probably cannot afford it.

Ms. Gigantes: May I go back to law enforcement? It is a section that creates a great deal of concern for me because it is one of the areas in which this bill is going to be useful to us in public terms and we have to be very careful about what we leave undone.

I ask you to look at clause 14(1)(1). Starting at the top of the subsection, it reads, "A head may refuse to disclose a record where the disclosure could reasonably be expected to," and I am going to skip to the bottom part of clause 14(1)(1), "hamper the control of crime."

I will then take you to subsection 14(3), which says not only that a head may refuse to disclose a record that may hamper the control of crime, in his view, but also that he can refuse to confirm or deny the existence of such a record. Does this leave anything that cannot be refused by a law enforcement agency or a quasi-law enforcement agency?

Mr. Borovoy: I think it would leave material that could not be refused. The simple answer is yes, there would still be material that could be disclosed under that, and probably quite a lot of it.

As I was mentioning earlier, this could be one of those examples where the kind of time we have had to give it might not have been adequate to digest fully any possible problems. Off the top of my head, I am not persuaded that this is too broad an exemption, but I am persuadable; I put that to you. It does not occur to me, off the top of my head, that it is too broad, but perhaps it might be. In other words, you or someone else might have some examples that could persuade me that the language should be tightened, but it did not jump off the page at me the way some of the others did.

Ms. Gigantes: Generally speaking, it has struck me over time that whenever a law enforcement agency has engaged in activities that the general public would not consider to be legitimate activities, the representatives of that agency have genuinely and honestly said to themselves and to anyone who asked that they were doing so to control crime of one kind or another. I would therefore expect that there would be a large body of questions that members of the public might like to have answered that would be denied in the first round under this legislation that would then be reviewable by the commissioner. But what grounds does a commissioner have to challenge a notion as broad as hampering the control of crime?

Mr. Borovoy: The commissioner would have to be satisfied that the disclosure of that information would hamper the control of crime. That is the point of having someone who is independent of governmental pressure make that judgement. Yes, it is a judgement call, and where you deal with judgement calls there is the risk of abuse. I am not the Attorney General (Mr. Scott) and that may be why I could be persuaded--

Interjection.

Mr. Borovoy: I will accept your nominations.

I am persuadable that tighter language would do it, but I would put to you that the objective is a legitimate one; namely, the disclosure of that which would hamper the control of crime is a strong argument for not disclosing it. We know people make a lot of extravagant judgements about such things. I am not sure how much better we can do than make that subject to the discretion or the adjudication of an independent. However, if there is tighter language that occurs to you, I for one could probably be persuaded. It is just that at the moment it did not jump off the page at me in the way that some of the other things did.

Mr. O'Connor: I am interested in the comments you made in response to Mr. Warner's question about appeals to the court and I am somewhat surprised at your lack of faith in our court system. Surely, as the situation stands now and notwithstanding what the Attorney General says, there is very limited review to the court under the Statutory Powers Procedure Act. Thus, very few decisions of the commissioner will ever get into the court system.

I suggest that the court system, which is an open and public forum and which has the appeal routes available to it up the line, is surely much preferable to a situation where a single person in a private hearing might make a decision. He may be making it in the best faith and he may be a good commissioner, but in the light of your other suggestion that we appoint him for a longer period, say 10, 12, 15 years or whatever, he may, for instance,

turn out not to be the best of commissioners or he may have a bias in favour of nondisclosure rather than disclosure which shows up after a number of years. Surely protection is necessary to permit a citizen access to the court system on a regular basis to redress that condition, should it arise.

Could you perhaps elaborate somewhat on your comment that you lack some faith in our court system for these purposes?

Mr. Borovoy: I would not want the conclusion to be drawn that I necessarily lack faith in the courts for these purposes. I am simply not prepared to repose exclusive faith in the courts. Other adjudicative tribunals in our society have performed very competently in certain areas and, in my view, better than the courts. I do not think there is any magic in the courts compared to some other innovative adjudication system.

There are areas where I have had lengthy debates. If I were to look at the boards of inquiry under the Human Rights Code or at the Ontario Labour Relations Board and boards of arbitration in labour relations matters, and compare their decisions with those of the courts in a lot of those areas--this is a judgement call--in my view, very often their jurisprudence was superior to that of the courts. As I say, that is a judgement call. If we could get into the specifics, I would be happy to try to demonstrate that to you. When you said the courts were open and this would be closed, that is not necessarily the case, because this would have to be an in-camera judgement.

3 p.m.

If you say that maybe you would rather have more than one person, that is an interesting criticism. There might be a staggered tribunal with three people at staggered terms. That is another possible way. I am simply saying I am not wedded to the conventional judiciary being the only legitimate form of adjudication in these matters. I am quite open to consider alternatives.

Mr. O'Connor: You could argue that in your scenario where there are administrative tribunals that are superior to the courts such as the ones you mentioned--and I agree with you about some of them--in those cases there are few appeals from them to the court system because the quality of justice they are imparting is so good.

Mr. Borovoy: Not necessarily. The reason I am able to make the comparison is because there were appeals to the courts and in my view their judicial decisions were quite inferior by comparison in a number of those cases. It is precisely because I am able to make that comparison.

Mr. O'Connor: I suppose the winners in those cases would have the opposite view, that the judicial process was much superior.

Mr. Borovoy: There is no question about that.

Mr. Chairman: There are a couple of points that I think we will have a problem with and that I have some difficulty with. I would be interested in your comments on whether, in going through the sections of the bill that attempt to protect the individual's privacy, you think the bill really does that. We have had some discussion, for example, about the use of all the information that is on computers, matching it up and getting access to it in that way. Are you reasonably happy with the provisions, so that there will be enough protection for individuals that way?

Mr. Borovoy: Do you mean in the way the material is stored and kept? Is that what you are referring to?

Mr. Chairman: Stored, kept and made available.

Mr. Borovoy: I have not reviewed that with the care that I have the others. I would be happy to take a look at it, but I am a little reluctant just to shoot off the top. Nothing jumped off the page at me, but I would be happy to take a second look.

Mr. Chairman: We would be interested in any comments you might have to make subsequently on something such as that.

There are a couple of other areas. We have seen how other jurisdictions go about it and we have heard some comments before the committee. We do not yet totally understand how this process might really work as to how much of it will be private decision-making by an individual or by a group of people on whether information should be released and the mechanics of what to do if you are unhappy about that. In other jurisdictions, after the legislation has been in place for a while and shakes down, there seems to be a general awareness of what you can get just by asking and what you can get by making an application under the freedom of information bill. People seem relatively satisfied with it.

As we venture into this, my personal concerns are with the number of people who will say, "We want to go to court over this." For a large corporation that has a lawyer, legal fees are no concern. For most of the people I represent, it is a totally impractical suggestion. It is a long reach for me to say that one of my welfare cases can hire a lawyer or get a legal aid certificate or that we can devise a mechanism that will make the Law Society of Upper Canada respond to that. It could happen--I believe in prayer and miracles--but I do not think it is going to happen quickly.

Mr. Borovoy: I suppose the converse proposition is the scary one, that if the commissioner orders the disclosure or release of the material, the government can then appeal it to court.

Mr. Chairman: Yes, and then we would go for three or four years or however long it took. Can you share with us some of the concerns you might have about that? I know you said earlier there must be a way to get lawyers to act on someone's behalf more quickly than through the use of legal aid certificates.

Mr. Borovoy: Something occurred to me off the top of my head as you were talking. I do not recall whether it is in this bill, but I remember it was done at the federal level, and not everything done at the federal level should be criticized at this level. There was a rather interesting procedure. They put in their bill that within so many years there had to be committee hearings on it and it had to be re-evaluated. It is written into the bill. Is that written into this bill?

Mr. Chairman: The problem I am getting at is that we have looked at a number of agencies that started off to be, I guess the term is quasi-judicial in nature. The idea was that there are two or three folks. You do not need a lawyer. You can go and make your argument and away you go. You do not have to go through the court system. You do not have to hire a lawyer. You do not have to wait three or four years. You can simply go and talk to these people, state your case and they will make the adjudication.

More and more, as we have reviewed these agencies, we have seen the disturbing tendency that although they may not be courts, the lawyers are there and the only people who get a fair hearing in this process are people who are able to use lawyers. In essence, what we have cranked up here is an official court system and, in a lot of cases, an unofficial court system where they are not judges; they are appointed.

One party may have legal counsel and the other party may not. Some are aware of their rights and some are not. There is a measure of greater unfairness creeping into that system. What I thought would be a highly commendable concept, where we would get a quick answer from a tribunal, is being thwarted, probably from very noble intentions, by becoming almost a court system, a court by another name. Do you share my concerns about that?

Mr. Borovoy: Yes. Of course, this is not confined to the issues being dealt with here. It is endemic to a complex society such as ours. You have the competing pressures of the need for expeditious decision-making on the one hand and the need to be as fair as possible on the other. How does one strike the best balance? It is extremely difficult to do.

For that reason I must say one of the features of this bill is a commendable one, in my view. That is the one that provides for mediation. One might have a lot of expeditious decision-making that would be helpful, if that mediation system works properly and if it is sensitive and informal. Of course, much of that depends upon the competence of the people you appoint. There are limits to what the Legislature can do in that respect.

Mr. Chairman: There is one other area where I have some concerns. Many of us have looked at things that are loosely called security reports, police reports or whatever.

Mr. Borovoy: Do you want to tell me what was in them?

Mr. Chairman: Later, when Hansard is up.

I was somewhat disturbed that a lot of information goes into that kind of a process. We may well be setting up a mechanism that kicks out all that information into our society. Because it is a closed process now--you cannot see those documents--there has been an increasing tendency to write whatever you want on there. It does not matter that it would not stand up in court, it does not matter that it is hearsay, it does not matter that it is gossip or that it is what you heard on the street. It is written up and already stored in various government documents around here.

How would you suggest we go about cleansing that? We have seen the very concept of trying to cleanse it in a number of other jurisdictions. They have said: "We found we were collecting a lot of garbage information that we did not need to have, so the practice has now become that we vet a lot. We take names off. We remove identifiers. We take out information that is not relevant." Those are judgement calls all the way through. Do you have any comments on that process?

Mr. Borovoy: I do not recall now well the bill deals with this. One might mandate the commissioner to audit this kind of thing and make reports based upon what he has actually seen. As a consequence of those reports, a lot of us might get a better idea of what is in there. Some of it might be taken care of through the fact that people can get some measure of access to what is said about them. They may start to learn and that might generate a certain amount of public discussion.

There will be reports that people cannot get to see. I wonder to what extent we might try to give independent officials a more explicit mandate to check for that kind of thing and make reports. We might then get a better idea of what is in there and be able to make some useful recommendations on how to handle it.

3:10 p.m.

Mr. Chairman: Those are the kinds of techniques talked about in the bill. My concern is simply that if the freedom of information act provides that a lot more people can get access to many more records, a media person who writes a sensational story from the confidential report, for example, that will be on the front page. Four days later, the retraction that this was not confirmed information, that it was quite wrong and they did not mean to say it, is going to be on page 9. There is nothing I can do to solve that problem. We can all go to court and sue for damages. All my family has to do is sit around for three years while the courts get around to dealing with this. That is the problem I am trying to get at. Short of saying they cannot have the information, which is one route, or saying the individual must allow it to go out, which is another route, I have this small problem rolling around at the back of my mind about exactly what we are doing.

Mr. Borovoy: You are quite properly identifying real problems. I have always looked at this exercise as one that has certain risks of that kind attached to it. It may well be beyond human ingenuity to have an adequate system that protects the competing values as well as we would like. We know as soon as we move in one direction, we are exposing something on the opposite side. I do not know how one does that adequately except by trying to learn as much as one can from the experience.

We make one value judgement at the outset: the need for this is great enough that it justifies some of these risks. Considering that, our job in the next little while, as we have the experience, is to examine how we can confine those risks. To be fair, the bill already does this to some extent. Where you are talking about the disclosure of information that may invade people's privacy, where you have that conflict between access on the one hand and privacy on the other, I was interested to see that this bill uses much of the approach the Williams committee recommended. In that respect, I think it is much better than some of the other attempts in this country that err entirely on the side of protecting the personal information or entirely on that of allowing access. This bill tries to go through that delicate balancing exercise.

I hope that deals to a great extent with what you are talking about. I found those women's recommendations rather sensitive to these problems. Of course, in the real world nothing is ever going to work adequately. Our job will be to come back and try to sort those things out as we have the experience. Maybe one should broaden the commission. Maybe it ought not to be one person. Maybe it should be a tribunal where some others are charged with the specific job of conducting audits and making periodic recommendations so we can minimize the risks you are talking about as much as possible.

Mr. Warner: I have a request. I understand all too well the limitations of your resources. For the good work you do, they are simply not enough. If you have the opportunity over the next few weeks, I for one would appreciate whatever comments you might have in written form on any part or all of the bill, with any suggestions you might have about different wording, a different direction or whatever. The committee is not going to wind this up tomorrow.

Mr. Borovoy: Sometimes we do these things orally and informally, which saves a certain amount of work. That is not to say we would not do it in writing, but sometimes we can work even faster. We have had that experience with various committee members of the Legislature over the years.

Mr. Chairman: We thank you very much for appearing here today. As always, we appreciate your advice.

I have a little problem. The next scheduled group has not arrived yet, so I think we will take a break for about five minutes.

The committee recessed at 3:12 p.m.

3:22 p.m.

Mr. Chairman: We are ready to resume.

The next group is from the Ontario Association for the Mentally Retarded. Harry Beatty is the legal counsel, Sherill Carden is the community living adviser and Laurel Cropley is here as well. In case you have not been to one of these events before, we simply want to give you an opportunity to say whatever you want to say, to go over your brief or make comments, and then members of the committee will have some questions for you. Proceed.

Mr. H. Beatty: May I ask whether the brief has been distributed?

Mr. Chairman: Yes. The members have copies of it.

ONTARIO ASSOCIATION FOR THE MENTALLY RETARDED

Mr. H. Beatty: I will start by saying that perhaps in preparing the written submission we did not stress enough our support for some of the provisions in the bill. It is perhaps natural to focus on those points that we would like changed, but certainly I think there is a lot of content in Bill 34 that our association is very supportive of. In particular, subsection 13(2), which addresses public availability of reports done for government, including factual material, statistical surveys, valuations and so on, will be very helpful in giving the public and public organizations a chance to evaluate the advice given to government.

Of particular concern, of course, are reports which relate to human services. As well, section 21 dealing with protection of privacy, and, in general, the provisions dealing with individual privacy, are quite well done in our view. That is why we have not chosen to make many specific comments relating to them.

If you will turn to page 4 of our brief, I will review briefly the principles which underline our recommendations of changes to Bill 34.

The first one is the primary one. We advance as a principle that individuals and organizations, including charitable, nonprofit corporations and privately owned corporations provided with public funds to provide human services, must be accountable to the public for the use of the funds, the quality of the service provided with public money and compliance with regulations which govern licensing and funding procedures.

As an organization advocating on behalf of a group of persons who are disadvantaged, we feel that where the services being provided are directed to

very vulnerable people, that this heightens the requirement that there be public accountability. We recognize that there has to be a balancing in the area between public accessibility and individual privacy, which may be difficult to draw in individual cases. In our submission, individual privacy, while a legitimate consideration, cannot be interpreted in such a way as to stand in the way of proper, public monitoring of facilities which use public money to provide human services.

Moving to the next page, the first specific concern we have is with the definition of institution. We recognize Mr. Scott's commitment before this committee yesterday to extend the scope of this legislation to cover a large range of agencies and boards. Certainly, that is a move in the right direction. Nevertheless, we call your attention to the fact that many service providers, both nonprofit and commercial, are not going to be governed at all by this legislation as currently envisaged.

As you can see at the bottom of page 6 of our brief, we wrote to Mr. Scott last fall on this issue. On page 7, it is pointed out that he indicated that in his opinion other publicly funded agencies and local government bodies ultimately should be brought into the scope of the legislation. What we are saying today is that this should be done sooner rather than later.

It concerns us that public services, such as nursing homes, homes for the aged, children's aid societies and our own member associations, are not covered by this legislation. They are not covered for their own protection and, perhaps most important, so that people receiving these services, as well as their families, friends, advocates and interested community groups, will not have access to information about the way in which the services are being delivered.

3:30 p.m.

The concern from our perspective is perhaps strongest in the case of the profit operators because nonprofit operators are often charities. There is a way of getting information about charities through Revenue Canada. Other concerns can be addressed through the office of the public trustee and so on. Specifically with respect to for-profit commercial services, the accessibility of information is quite poor and is not improved by this legislation.

Our second concern relates to the definition of law enforcement and agency, or rather the lack of a definition in section 14, which deals generally with the ability of law enforcement agencies to refuse to disclose records. We hasten to stress we are not objecting to the fact that law enforcement agencies should have some protections in this area; they need protection so they can properly conduct their investigations.

Our primary concern is that we do not know what investigatory bodies are covered by this; whether it is law enforcement agencies in the narrow sense, such as police, the Royal Canadian Mounted Police and so on, or whether it includes in the wider sense people whose duty it is to enforce regulations governing human service programs, for example, program supervisors under the Ministry of Community and Social Services and inspectors under the nursing homes inspections branch of the Ministry of Health.

We recognize the difficulty of the issues in this area, but we think some work has to be done on section 14 to indicate who is and who is not covered.

Our third recommendation relates to inspections. Again, we can take the nursing homes inspections branch as an example. Where there are investigations into the quality of care and human services, and particularly where there are serious allegations, while, as we have just indicated, not everything could be available during the course of the investigation, there should be a public final report. We believe this can be done in a way that recognizes the privacy rights that are appropriately recognized within section 21 and the other provisions of the act.

At present, again to take nursing homes as an example, the annual relicensing reports are available for public inspection. If there is a violation relating to an individual in the annual relicensing inspection, that is included in the public report in such a way as to conceal the individual's identity and then the action taken is disclosed. If the investigation is not the annual relicensing but another type of investigation, such as in response to a complaint, there is no public report; the report is confidential.

We think this is inconsistent. This is the type of report that should be available. If a complaint is made against a facility or a service and it is substantiated, we believe in every case some report of that should be available to residents, and when residents are vulnerable or when they are children or disabled people, their families should have access as well.

In situations in which services have been deficient, families are often quite shocked to learn of it first through a media report or something of this type. They complain to us: "We did not know. Nobody told us things should be corrected." We believe ongoing information about this type of problem is in everyone's interest.

Fourth, as part of monitoring publicly funded facilities, again including the charitable organizations and the commercial services, there should be access to financial information. Bill 92, which dealt only with nursing homes, was introduced in the Legislature during the last session, as you are aware. As we have already stated, we believe this should be extended to all types of human services which are publicly funded. The bill was a good start, but there were some things that could have been perhaps strengthened. We understand it received second reading and was not enacted into law.

For example, it required that a budget of all projected expenditures of a home be made public, but not that there be a full accounting of the expenditures for the previous year; for the previous year there would be only a report which would be a statement of profit and loss. We think a more detailed statement should be required and perhaps a report of the auditor so we know an accurate statement has been made publicly available.

In connection with financial information and section 17 dealing with refusal to disclose trade secrets, scientific, technical, commercial or financial information, we note that in his remarks yesterday, the Attorney General indicated that will be changed to a mandatory provision. In our submission, despite subsection 17(1), subsection 17(2) is a legitimate exception. Financial information about human services should fall under subsection 17(2). Financial records about human services is a case where the public interest in disclosure outweighs the interest in confidentiality. However, if subsection 17(1) is made mandatory, it is important that subsection 17(2) be clarified. One possibility might be to list some specific types of information that would be available under subsection 17(2).

Our fifth point on page 10 of our brief simply refers to what we think is confused wording in section 30, which deals with the right of the public to

get a copy of records which are otherwise available. If you turn to section 30--in particular, subsection 2--we really have just a question of interpretation. It may be that that section simply means a head can refuse to disclose a record which is otherwise available; that is, the head may refuse to disclose access to the original and provide a copy. The way it is worded, as we have set out in the brief, it also may seem to give a discretion to refuse access to the whole record that would otherwise be available under the act.

It is only a wording problem and I do not want to dwell on it, but we hope that wording is cleared up because access to a record is often of little value if you cannot get a copy, particularly if it is a detailed or complex record. As a student, I used to do cases at the Workers' Compensation Board and we were not allowed to make copies of anything in the file. I can still remember sitting there with a very thick file trying to take handwritten notes to prepare for the appeal.

A lot of that has been remedied in the several years since I did it. I hope we do not put people in that position. Sure, you have access, but it is this thick and here is a pen and paper.

Finally, with regard to appeal, which has been raised by other organizations, we would also like to raise our concerns about the limitations that seem to be apparent in the discretion of the commissioner under subsection 46(1). Again, we realize that Mr. Scott made a clarification in his statement yesterday, but it is still not clear to us that the commissioner has enough authority to review the exercise of discretion by heads of institutions, even under the amended provision.

It appears to us that it is still being said that the commissioner can go only so far to look into whether there appears to be a valid reason for holding that the information falls under one of the exemption sections, such as sections 13 or 14, but that he cannot review whether the right decision was made in refusing to disclose.

In an outline, those are our submissions and we are available for questions.

3:40 p.m.

Mr. Warner: First, I would like to thank you for your presentation. I have had the privilege of hearing your thoughtful remarks on topics in another committee and I certainly appreciate it whenever you come before us.

I would like to go back to the whole issue of the nursing homes, because what you mentioned is very disturbing and a little puzzling to me. I am trying to sort out what I can or cannot obtain if the legislation is passed the way it is currently worded. I note that in the list of agencies proposed for coverage is the Nursing Homes Review Board. Is it your understanding that I can or cannot receive information from the nursing homes branch through the Freedom of Information and Protection of Privacy Act?

Mr. H. Beatty: Yes, you can receive information from the nursing homes branch, which is part of government. Our concern is about information that the nursing homes branch may not have and may not itself have authority to require, such as the example of the financial information. What are the actual expenditures on programming, food and so on?

If the Nursing Homes Act were amended or if something like Bill 92 passed to require further disclosure to the nursing homes branch or to another branch of the Ministry of Health, then this legislation might be of more assistance. However, as it currently stands, the nursing homes branch does not necessarily have that information.

The second issue is that even if the nursing homes inspection branch has that information, now is section 17 going to be applied? There is a fairly wide exemption, which is now mandatory, under subsection 17(1) for financial information, and I believe that now includes labour relations information. If that is interpreted widely enough, then we still may not have that information made public. In other words, we see some contradiction between the approach in Bill 92 and the approach in this act.

Mr. Warner: You are saying that your understanding of this legislation is that I could not obtain information directly from the home, information that the nursing homes branch may not have, even though that home is receiving public money?

Mr. H. Beatty: That is right, because the home or any organization that is a transfer payment agency is not covered.

Mr. Warner: That is a serious flaw.

Ms. Carden: If I may just comment a little further, if my reading is correct, it would not cover complaints that were of a confidential nature. If a complaint regarding an individual resident of the nursing home were submitted to the nursing home branch of the Ministry of Health, because of the confidential nature of the complaint and the identity of the resident, the nursing homes inspection service would not provide that information.

Therefore, a relative who is shopping for a nursing home has no idea of how many complaints have been made to the nursing home inspection service or how many complaints in total have been made to the nursing home itself and so on. He has the inspection reports, which have fairly limited information, but no complaints that have been made directly to the nursing home or to other organizations.

Mr. Warner: I understand what you are saying and I find it very disturbing, because there is a twofold problem here. Number one is at the home itself. Of course, in many cases the whole idea is to profit; the idea is to make money, and therefore you cut back on staff. You have minimum staff and minimum programs provided for people. If you can work it out, you make sure that you get the folks drugged up pretty good so that they do not move around a lot. You do not worry too much about their diet.

The number one problem is getting hold of whatever information may be available and that you should have. The number two problem has traditionally been the internal reports of inspections with recommendations for revocation of licence, court action, fines or whatever. I have never been able to get my hands on them. Those are internal documents. The very delightful relationship between the Ontario Nursing Home Association and the senior officials meant that I was not likely ever to get my hands on them, but they exist. It is the public's right to have access to that information, notwithstanding that I as a member of the Legislature should have a right of access to that information.

I naturally assume that because these folks are getting public money--I dare say many of the homes would not exist without public money--individual

citizens will be able automatically to have access to the information through this bill for several purposes. One is to ensure that proper conditions are maintained. The second, as you mentioned, is to ensure that when relatives are attempting to find a suitable place, they will be able to have the relevant information they are seeking. I am flabbergasted that this is not included in the bill. It is a serious flaw. I for one intend before we finish that we are going to redress that omission. It is clearly unacceptable in my terms.

Ms. Carden: It affects 29,000 nursing home residents in the province, many of whom have mental or physical handicaps, as well as the elderly.

Mr. Warner: I am all too painfully aware of the situation that exists in many of our nursing homes. We have just scraped the surface of the nursing homes. I assume the rest homes are excluded from this. We have almost zero control over rest homes.

Mr. H. Beatty: Even if what we suggest were adopted, they may not be funded by public money.

Mr. Chairman: To clarify your submission for a moment, you are basically saying that anyone who is supported in virtually any way by means of government funding should come under this act?

Mr. H. Beatty: That is what we are saying. Perhaps I can give an illustration.

Mr. Chairman: It would be helpful if you would give us parameters. Are you saying everybody? I remind you that there would be a lot of apartment building owners who would say, "Ninety per cent of my people are pensioners." Are you meaning to say that? I do not think you are.

Mr. H. Beatty: If the support is just through a person's private income, which is paid through social assistance or a pension scheme, we are not going so far as to say that would be covered.

Mr. Chairman: Back it up just a little bit. Something like socially assisted housing for seniors may have a building that is put up with public funds and administered by a local board or something like that. Are you indicating that you would like to see those included under this? I am not quite sure how many documents they would have but they would have some.

Mr. H. Beatty: You are talking about a building that was funded by public dollars, the construction and so on?

Mr. Chairman: That is right, and run by a community board of some kind, or a group home run by a local association.

Ms. Carden: Yes, that is exactly right. We are talking about using the definition of an institution to include nursing homes, homes for the aged, group homes that are operated by our own local associations for the mentally retarded, homes that are operated by charitable corporations and so on.

Mr. Chairman: Let me pinpoint you there. There is now a lot of the private sector functioning in that area. In other words, in my community and in almost all, the private sector has found this is a good deal. It is hot and heavy into group homes, homes for special care, rest homes, everything. They have learned that these people get a pension cheque from somebody through some

source. "If I run some kind of accommodation for them, I am guaranteed payment as long as I conform with this little code over here." Would you want those included under this too?

3:50 p.m.

Mr. H. Beatty: Yes. It is really public money. If you take our association, the Ontario Association for the Mentally Retarded, for a typical association for the mentally retarded that is delivering a service, 80 per cent to 90 per cent of the money is from the public purse. The overall direction is managed by the board of directors, which is elected in the local community, but it is also supervised to a large extent by government staff.

If it is not included, there is going to be a question. If somebody has an inquiry about the kind of service--and to take our association as an example we are not included--presumably they cannot then make the inquiry to the association. What if they go to the program supervisor or to the area office? It is going to be a difficult problem deciding whose information it is. That will have to be addressed if they are excluded. I argue that it makes more sense to have a public association under the same rules and the same protections.

The other thing is that from the viewpoint of an agency delivering service, there are protections in here for our clients in terms of individual privacy. We are not just thinking of getting at information. We would like to be able to point to some laws that say to the public, "No, you cannot have that."

Mr. Warner: I understand what you are saying. The chairman raises an interesting point. We need some definition. In loose, general terms, I am looking at some kind of floating principle. In other words, if I look at privately owned nursing homes, it is fairly obvious they exist because of public subsidy. Without it they would probably not exist. Therefore, I find the test of whether they are within the public domain, although they are privately owned, fairly simple.

The chairman raises the question of an apartment building that is almost exclusively filled with pensioners whose sole source of income is the old age pension. That is a more difficult situation. It seems to me that to work at it we need some definition of what floats or sinks publicly. That is going to take a little work. No matter how we go at it, I underscore that it would be absolutely indefensible in my mind not to include nursing homes and the nursing homes inspection branch in the Freedom of Information and Protection of Privacy Act. That is essential, based on the sad experience across this province.

Ms. Gigantes: Mr. Beatty, have you had a chance to look at a list that was attached to the minister's comments yesterday when he talked about the enlargement of coverage of agencies, boards and commissions? I see two groups mentioned on that list. The second is the Nursing Homes Review Board. I have no idea what that is. I do not know whether you are familiar with it. The second is under the Ministry of Community and Social Services--district boards of management for homes for the aged and rest homes. Would either of those agencies be capable of providing the information you think the public should have?

Mr. H. Beatty: The Nursing Homes Review Board is involved in only limited cases where there is a dispute over licensing--a refusal to grant a

licence that is appealed or a refusal to renew or a revocation that is appealed. That is all the information they have. It is a board that deals with those disputes.

Ms. Gigantes: Their files would be minimal.

Mr. H. Beatty: As to the district boards of management for homes for the aged and rest homes, I have to confess I do not know about that at all.

Ms. Gigantes: I have never heard of them either.

Mr. Chairman: I am familiar with them. We have some in my community. They are essentially appointed boards, usually with combinations of regional councillors, local councillors and citizens. They administer homes for the aged. I have three in my community.

Ms. Gigantes: Presumably, they must have the majority of their board made up of provincial nominees in order to come under this.

Mr. Chairman: No. These would be run by the municipalities with almost exclusively municipal representatives on them.

Ms. Gigantes: My understanding was that the extended lists that we were given were based on either ownership by the province or the fact that the province established most of the nominations.

Mr. Chairman: No. The province establishes the board. In my experience, the nominees usually come from the municipalities.

Ms. Gigantes: Then I wonder why they would be included on this list.

Mr. Chairman: That is a good question.

Ms. Gigantes: I will try to get an answer to that question. If I could ask about one other area, Mr. Beatty, you raised the question of which are law enforcement agencies. That is a very good question. Are you suggesting that we should include nursing home inspectors as part of the law enforcement agency group in Ontario? Would you like to see that?

Mr. H. Beatty: The first point is with regard to clause 14(2)(a). That is probably wide enough. It refers to inspections, to include that function of a government department. In some circumstances, any investigatory body will need some of the exemptions under section 14 with regard to the conduct of its investigation. We are not suggesting that everything be available, but only a report of what it found out at the end. Our main concern about this section, though, is whether those people are included. They need some protection such as this. Perhaps it needs to be reviewed, to go through these one at a time.

Ms. Gigantes: If clause 14(2)(a) were applied to the nursing homes branch, it says the director or the head may refuse to disclose any report dealing with an inspection or investigation.

Mr. H. Beatty: It depends on how the terms are interpreted. It says "prepared in the course of law enforcement." "In the course of" means internal communications that are necessary to carry out the inspection. We submit there is no problem with that. Where we see the problem is if the whole thing is completed and there is no public report on what was disclosed; for example, on the reasons for not proceeding with an enforcement action when perhaps that should have been indicated.

Ms. Carden: If I could give an example, if an investigation into a particular nursing home were under way and the Ministry of Health determined that it would make X unscheduled inspections in the course of the next three weeks at such-and-such a time, we would not want that information to be disclosed because it would also be available to the nursing home in question or to the nursing home industry. However, we would want a substantial report at the end which would not simply document the recommendations and the findings but which would also substantiate them from the material gathered.

Mr. Chairman: Thank you very much for your submission. We appreciate that.

The next group is from the Insurance Bureau of Canada. It is exhibit 09. We have two representatives who will appear before the committee: Alan Bossin, who is the counsel, and Gordon Beatty, who is the automobile manager for the personal lines division of Royal Insurance Canada.

As we have explained to others, the floor is yours for a little while and then members will have questions for you.

4 p.m.

INSURANCE BUREAU OF CANADA

Mr. Bossin: Thank you. My name is Alan Bossin. I am counsel for the Insurance Bureau of Canada. My colleague is Gordon Beatty.

We have a very narrow issue to focus on today. It concerns the continued availability of motor vehicle driver records. These are abstracts prepared by the Ministry of Transportation and Communications which contain conviction information for driving-related offences. We believe that the information contained in these records is vital for underwriting purposes and that there is a correlation between convictions and the degree of insurance risk. An underwriter makes use of the abstract to assess the risk and to determine the premium. In this manner, premiums are equitably distributed so an individual with a lower risk is not paying for someone with a higher risk.

We are aware of the statement of the Attorney General (Mr. Scott) yesterday concerning the amendment to allow continued access to information that is not personal information and which was available by customary practice in the past. We are somewhat heartened and believe we may fall under that. However, we are concerned with the phrase "personal information." Our review of the definition contained in the bill includes the statement "recorded information about an individual," and that bold statement seems broad enough to include motor vehicle abstracts.

It has been suggested that one method of avoiding the problem, short of an amendment to the bill, may be through the use of application forms which give consent to release that information. At present, all motor vehicle application forms contain consent to release driving record information.

We have problems with this method of obtaining motor vehicle abstracts. First, the application is completed and executed by one individual and does not take into account secondary drivers, for example, other members of the family, or added drivers, for example, in fleet situations.

The second problem we see is that many applications for automobile insurance are conducted by telephone. There is usually some urgency and the

process of requiring an individual to take a step back, pick up an application from his broker, complete it by hand and sign and deliver it back to his broker is going to be time-consuming and will not allow him to be insured when he would like to be.

Third, it is not uncommon for insurance brokers to change their portfolio business, taking it from insurance company A to insurance company B. In that circumstance, any application that had been signed would be an application to company A and would be of no use to company B.

Fourth, as the elements of this bill become more known to the consumer there may be a reluctance to execute a release allowing information to be obtained. That would have a backlash effect and result in an individual who might not be surcharged, being surcharged.

The method we advocate to alleviate the problem is a simple amendment to the bill to allow continued access by licensed property casualty insurance companies to obtain motor vehicle abstracts prepared by the Ministry of Transportation and Communications. Along similar veins, police accident reports prepared following investigations of automobile accidents are also of extreme usefulness to insurance companies in settling losses, expediting matters and obtaining information concerning the collisions, parties involved, witnesses and insurance companies. These, as well, we request to be continued to be made available to licensed property casualty insurance companies.

That is our main point. As a secondary matter, I realize section 17 has received a great deal of discussion in this committee. We are pleased to see the amendment to subsection 17(1) and think it substantially strengthens this section. With respect to subsection 17(2) and the public override concerns, we too would like to see the public interest defined perhaps as it is in the federal legislation so that the override for public interest is limited to situations that are then delineated as public health, public safety, protection of the environment, etc. Those are our submissions.

Mr. Chairman: Are there questions?

Ms. Gigantes: Could you tell us more about what a motor vehicle abstract is and why it would contain information about other drivers who may be associated with the driver who is seeking insurance? Second, how do insurance companies get access to police reports before any hearing; before any court settlement or court application?

Mr. G. Beatty: Regarding your point about the motor vehicle abstract, there is an abstract obtained on each driver. The standard form which is an approved application requests the information on drivers. For example, when we take an application, we have the applicant's name, address, licence number and so on. We also ask for the addresses of any other drivers of the vehicle. We would then have to inquire for each driver on whom we wanted to find the driving record. If there are three drivers, we order three motor vehicle abstracts; one on each driver.

The problem is that under the approved form the only person who really has given us consent is the applicant himself. The secondary drivers have not given us any permission to obtain a motor vehicle report on them, and under the terms as we read this we would be precluded from ordering any motor vehicle records on secondary drivers, as we have been doing.

Ms. Gigantes: Aside from delay, because once you had identified the other drivers involved you could similarly seek consent, is there any other problem?

Mr. G. Beatty: Actually, if you took it to its ultimate, we would not be able to obtain them at all. The mention of the delay is the concern about expediting the coverage for the applicant who wants it immediately on buying the car; he does not want it bound three weeks later. Our interpretation of the bill is that we would not be permitted to obtain those MVRs on the secondary drivers at all and therefore would not know what the driving records of those people were.

Ms. Gigantes: You would if you had their consent, and if they are going to drive the car and be insured by you.

Mr. G. Beatty: I see your point. That would necessitate getting signatures from every driver of the vehicle. This is what you are suggesting would be the alternative. I suggest that once the vehicle is insured--and you do not ask the whole family to come in and complete an application; that probably would be unreasonable--you would then have to go after consent to get an MVR. I think if anyone had a particularly bad driving record, he would be pretty reluctant to send in his consent, because the policy automatically covers him without the MVR. In a lot of cases, we would not get them.

Ms. Gigantes: I can see why it would cause an inconvenience for your business, but I cannot see where it is a disastrous kind of inconvenience.

Mr. Chairman: May I pursue that for a second? There are two sides to this. One would be from the insurance company's point of view. Until such time as you had reasonable information on a driver, you would probably simply bump it up. I do not think you would refuse to insure somebody; you would simply charge him a high rate until such time as he provided you with all the consents and things such as that.

Mr. G. Beatty: I suppose that is a possibility, but I do not know at what level that rate should be until we know the experience of the drivers.

Mr. Chairman: Let me rephrase it. If I phone Ed Gallagher and say: "I just bought a new car. I need some insurance on that. I am the prime driver. My daughter, The Crasn, is coming back from Texas. She will be driving this weekend. Call the collision companies." Ed says, "You are insured." From that moment on, I can drive, my daughter can drive, my wife can drive, my son can drive; we are all covered.

4:10 p.m.

You are suggesting what might happen here is that none of us could drive with insurance until we provided you gentlemen with some application form that said you can have access to my records and each person who drives on a regular basis would also have to sign a consent. This might mean that Ed would say: "Fine, Mike, call me back in three weeks when you have all these consents put together. I will write you up and you will be insured." Or he might say: "We will insure you at this astronomical rate for the next week until you get all the consents in and we run all this stuff through the computers. It is going to cost you \$500 a week for insurance, and after that it will drop to our normal rate of \$495." Is that roughly the scenario you are afraid of?

Mr. Newman: That is per week.

Mr. G. Beatty: I suppose if we could get that kind of premium for it, we would not be concerned.

Mr. Chairman: That is why I am wondering why you are here.

Mr. G. Beatty: From a practical point of view, it would not be logical to be able to name this astronomical premium. Simply holding a gun to their heads would become unacceptable fairly quickly, because the individual wants to know when he buys his insurance what the cost of the insurance is. I suppose it would become a case of who is going to take a gamble on the driving record of all the various drivers of the household. If you want to look at it in terms of the kinds of premiums, yes, I suppose this is possible, but I question the practicality of it.

Ms. Gigantes: What rules currently govern an insurance company finding out anybody's motor vehicle record? Can you find out my motor vehicle record even though I am not a client nor do I propose to be a client of yours?

Mr. G. Beatty: You would have to give me the information to get it in the first place, because I have to have your driver's licence number. You would have had to give me that kind of information in order for me to get it. Again, the application does give consent. I suppose there has been some poetic licence in terms of what that consent brings in, but it brings in the other drivers of the vehicle. I do not believe there has been anything to preclude that in the past. We have had no difficulties in getting it anyhow.

Ms. Gigantes: You mean if I have somebody's licence number, then I can call the motor vehicle registration and find out what his record is?

Mr. G. Beatty: I do not know what their restrictions are on that. We as an insurance company have had no problem getting it, but there is broad consent that we do get it only for those cases that are required. I suspect if they found us abusing the privilege, it would be a different thing. I do not know whether you can get it on an individual or not. Do you know?

Mr. Bossin: Yes. You merely fill out the application and pay your money. Law firms do it all the time.

Ms. Gigantes: Second, on the question of police reports, these are useful for insurance mediation, I guess, or a settlement outside a court.

Mr. G. Beatty: Claim settlements.

Ms. Gigantes: How do you obtain them now?

Mr. G. Beatty: They are obtained by a direct request. Frankly, I am not in the claims area so I do not know what the procedure is for getting them, but they are obtained through the police department. I am sorry, I do not know that.

Mr. Bossin: Once again, it is by application and fee. It is a one-to-two-page summary, including a little picture diagram and a three-line summary of the accident. It will list the parties involved in the accident, their insurance companies and any witnesses to the accident.

Ms. Gigantes: You feel that would not be available under this legislation?

Mr. Bossin: We have concerns based on the rather wide definition of personal information.

Mr. Chairman: Is it in effect now? Unfortunately, I happen to be familiar with this process. I tell my agent a licence number and a couple of other identifiers--the police officer's number, the date of the accident and things like that.

In effect, there is a release of sorts at work now. I provide my agent with information and by doing so I am in effect giving him consent to get that accident report and use it; so is the other insurance company at the same time. There is a consent process now, just as there is with the application for insurance. There is a consent process at work now when I call an insurance agent and tell him what my driver's licence number is. I may not be aware of it, but I have consented to let him do some research work on my driving record.

Mr. Bossin: It is a consent of sorts, and the question is how far we take that consent.

Mr. Chairman: Okay.

Mr. Warner: I take it you are talking about part III, which starts at section 35.

Mr. Bossin: That is correct.

Mr. Warner: Are you suggesting an amendment to any of those sections?

Mr. Bossin: We were looking at possibly including it under section 39, although we appreciate that is too broad. It says a head may disclose personal information. We are not looking for all personal information. We are looking for particular information contained in the motor vehicle record. We envision something under section 39.

Mr. Chairman: Your problem would most likely be resolved by means of a regulation which specifies who may gather this information and what information may be gathered. To my mind, that would be the most practical way to resolve it.

Ms. Gigantes: There is not a lot of personal information on an MVR, is there?

Mr. Bossin: No.

Mr. G. Beatty: It is only a person's driving record and conviction record. That is all that is on there.

Mr. Bossin: A brief was submitted by the Facility Association, which is a creature of statute created through the Compulsory Automobile Insurance Act. They are also very concerned about the abstracts. They probably make more use of them than do insurance companies. They are vital tools in being able to provide insurance to high-risk individuals.

Mr. G. Beatty: The important point is the method of trying to assess the probability of loss. Many studies have established the correlation between conviction records and accident involvement. We are trying to ask: "What is the measure of risk? How many convictions has this person had? What kind of premiums should they pay for those convictions?"

Mr. O'Connor: I am a practising lawyer and have had experience with obtaining the motor vehicle records you speak of and the accident reports.

They are both very easy to obtain upon writing a letter. There is not even an application form to fill in. You write a letter either to the Ministry of Transportation and Communications for the conviction record or to the local police department that investigated the accident. By return mail, you get the thing.

In addition to the information you have indicated on the accident reports which are prepared by the police officer who investigated the accident, there is supposed to be an objective analysis of what happened without attributing blame, but there is a section for indicating whether any charges were laid. Often that is the most important section from a lawyer's point of view because it does indicate, in the mind of the police officer at least, who was at fault.

What is the procedure of an average agent when a new client wants to become insured along with the rest of his family? He provides the consent and the names and so forth of other drivers and wants coverage immediately. It is often a request by telephone because he is going somewhere or he has bought a new car or something. You quote a price and you cover him. You then run the names through the ministry and get their drivers' records.

What do you do if information comes back that one of the drivers has a horrendous record? Do you indicate that you are not prepared to cover him? What if an accident has occurred in the mean time? How quickly can you get your MVR information and how quickly can you quote that price?

Mr. G. Beatty: The application itself asks for this information. It asks for accident record and conviction information. All we are doing is confirming through the motor vehicle record that the conviction record we were told about was accurate. Even with knowledge of the fact that we can check that, there is a lot of inaccuracy in the information on the applications.

Mr. O'Connor: If somebody had left off significant information and had an accident, you could disclaim coverage for him if you wished.

Mr. G. Beatty: If you could establish that it was adequate to consider voiding of the contract, perhaps you could. As you know, this is an area in which it is very difficult to establish the degree of misrepresentation. Our next step would be to determine whether we want to continue the insurance, and if we do continue it, whether we will continue it at a higher premium than was originally quoted, based on the fact that the information was inaccurate on the original application.

It is of interest to mention that in the most recent revision of the standard application, which is a form approved by the superintendent of insurance, that the question of conviction record was one that was inserted into the application at that time. It was never in there before. The federal department of insurance has felt that the aspect of knowing a conviction record is an important factor in the development of rates.

Ms. Gigantes: Up to this year, you have not asked people about their conviction record?

Mr. G. Beatty: I qualify that by saying there are two areas of requested information. One is the application form approved by the superintendent of insurance. Up until the revised form, convictions were not listed as part of the approved form but were requested as supplementary information on the reverse of the application. We did ask for it there. It has now been included as part of the approved application form.

Mr. Chairman: Anytning else? Thank you very much.

Members of the committee, I want to remind you that we are going to be nere at eight o'clock tomorrow morning.

Mr. Treleaven: Is breakfast being served?

Mr. Chairman: Such as it is. Can I count noses? Am I going to have some people nere at eight? Five people. Wait a minute. That leaves me one snort of doing business.

Mr. Treleaven: Yourself included?

Mr. Chairman: I need more than that.

Mr. Treleaven: You have six including yourself.

Mr. Chairman: Okay. You are aware of now I am going to proceed. I do not want to hear any arguments that there was not a quorum. At eight o'clock in the morning, I am lucky if I can see that door, let alone a quorum.

Mr. Turner: Check your insurance. It might go up.

Mr. Chairman: We have had a rather interesting letter from a subcommittee of the standing committee on the Ombudsman asking permission to submit a report on Bill 34 and for the subcommittee to present its views orally. This is a rather unusual request. As far as I can determine, we are soliciting briefs and opinions from the world, so I have no problem if the chairman of a subcommittee of another committee appears before the committee to make an oral report. I am not sure why this is happening.

Mr. Treleaven: Which subcommittee of which committee?

Mr. Chairman: Apparently it is the subcommittee of the standing committee on the Ombudsman. While it might be a bit unusual, it would be my inclination to write back to Ed Philip and say, "We welcome any bodies in here."

Mr. Warner: They nave dealt with freedom of information previously.

Ms. Gigantes: Cross-fertilization.

Mr. Turner: What is the purport of his words?

Mr. Warner: They want us to have the benefit of their experience, knowledge and wisdom.

Mr. Turner: I am pleased and very nappy.

Mr. Chairman: I tought you would be. Eight o'clock tomorrow morning. Thank you very much.

The committee adjourned at 4:23 p.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES, BOARDS AND COMMISSIONS
FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

THURSDAY, MARCH 27, 1986

Morning Sitting



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Eichmanis, J., Research Officer, Legislative Research Service

Witnesses:

From Ontario Hydro:

Regasz-Retny, G. W., Solicitor

Leonoff, L. E., General Counsel and Secretary

From the Canadian Environmental Law Association:

Patterson, G., Clinic Director

From the Ministry of the Attorney General:

McCann, S. B., Counsel, Policy Development Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS
AND AGENCIES, BOARDS AND COMMISSIONS

Thursday, March 27, 1986

The committee met at 10:12 a.m. in room 228.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
(continued)

Consideration of Bill 34, An Act to provide for Freedom of Information and Protection of Individual Privacy.

Mr. Chairman: The first submission this morning is from Ontario Hydro. Lawrence Leonoff and George Regasz-Rethy are appearing as witnesses. You have their exhibit, number 56.

I think you gentlemen have been around here before. You know we like to give you the opportunity to make any remarks you would like and go through your brief. Then the committee will have some questions for you.

ONTARIO HYDRO

Mr. Regasz-Rethy: I will introduce myself first. My name is George Regasz-Rethy. I work for my boss here, Larry Leonoff, who is the general counsel and secretary of Ontario Hydro. I am a lawyer in the law division, and my involvement in this first came about when the draft bill came out last July and I was asked to comment on it. Somehow the whole process grew, so I am currently the agency co-ordinator with the Management Board of Cabinet's implementation committee and I also head up a task force within Ontario Hydro studying the implementation of the act when it eventually gets passed into legislation.

To commence with our brief, the concept of freedom of information is not new to Ontario Hydro. For the past number of years we have provided thousands of Ontarians with all kinds of information dealing with most aspects of the company's business. Information flows to the public from many of our offices and branches throughout the province. Two examples are our inquiry and research department, which receives an average of 5,000 inquiries for information a year, and our media desk, which handles an average of 100 inquiries a day. In addition, we have a public reference library at our head office open to the public and an archives at our Kipling complex open to the public on a controlled basis.

In addition to providing the public with information directly, we also provide through the public review mechanism information to public tribunals and forums such as the Ontario Energy Board, assessments under the Environmental Assessment Act, joint boards studying transmission line proposals under the Consolidated Hearings Act, select committees of the Legislature, standing committees of the Legislature, royal commissions on Hydro affairs, the National Energy Board, the standing committee on public accounts and the Atomic Energy Control Board. As can be imagined, a vast amount of information is given to these public forums in their deliberations.

Through the twin mechanisms of an open-door internal policy and extensive public review, it is apparent that the principles of freedom of information have for many years been applied at Ontario Hydro. The information we did not release in the past is, by and large, contained in the exemption sections of Bill 34 and, therefore, the public's access to such information will not be appreciably greater under the legislation.

As a crown corporation, we understand the desirability of including Hydro in the legislative scheme. However, as a commercial enterprise competing in the energy marketplace, we feel it is inequitable to subject Hydro to a greater regulatory burden than our private sector competitors. Under the federal freedom of information legislation, commercially oriented crown corporations are not considered as crown agencies--companies such as Eldorado Nuclear Ltd., Canadian National Railway and Petro-Canada--for the purposes of their act. This wholesale exemption may not be necessary for Ontario Hydro, but we believe a practical approach would be to exempt certain areas of the corporation's activities from the requirements of the legislation. The two areas we feel should be exempt are the marketing functions and the operation of our new business ventures division.

In the marketing of electricity as an energy source, we seek to be on the same competitive footing as our competition, something that is impossible if access is to be given to the background documents, studies and information leading to our marketing strategy. In our new business ventures division, where we seek out international markets for our services and technology, confidentiality of sensitive business dealings with foreign governments and joint venture partners is a requisite to entry into the international marketplace. An exemption from the requirements of Bill 34 for these two areas of activity would permit Hydro to compete effectively and thus further the interests of the Ontario electrical consumer.

Another major area of concern for Hydro is that the corporation operates as a commercial undertaking, a vastly different administrative structure than a department of government. Whereas a government department, by and large, deals in the administration of programs, Hydro constructs, operates and maintains electrical facilities, markets electrical energy and engages in research and development. Government administration is driven by records instituting and tracking official activities, but Hydro's administration is driven by projecting and responding to customers' requirements. Records, official or otherwise, have never in the past formed the underlying basis upon which Hydro's activities have proceeded. This fundamental difference between Hydro and the government causes us problems with the way the legislation is conceived and written. We ask that these problems be addressed in revisions to the bill.

10:20 a.m.

Some of the concerns we have are as follows:

1. We have hundreds of thousands of files dating back to the early days of this century. It would be an impossible administrative task to categorize the records in them or even to index and describe such. We recommend that the bill only apply to records created after a certain date.

2. The bill is concerned with records, and yet the employees have always worked with information. Information is duplicated in an uncontrolled fashion throughout the company by employees who have a need for such knowledge in

their jobs. For sound business reasons, such dissemination of information is important. However, it may be administratively impossible to comply with the bill with respect to such records.

3. In many cases, personal information is contained in subject files, that is, files not filed under a person's name. The bill would require systems to discover, categorize, index and retrieve such information. This would be an administrative impossibility. Furthermore, we feel it is inappropriate for a commercial corporation such as Ontario Hydro to make consolidations beyond those necessary for doing business.

4. Working papers are records that are not categorized, indexed nor even filed under any subject heading. Their lifespan is ephemeral and their usefulness is limited, except in the context of a working paper. To avoid the administrative requirements of the bill, the legislation should make a reasonable attempt to define at which point in the developmental life of a document it becomes a record and, thereby, subject to access.

5. In the past, information may have been put into files or records on the understanding that it was and would remain confidential. In changing the fundamental basis upon which the information was supplied, individual rights may be detrimentally affected. Also, it may lead to media searches for sensational stories in material previously not made available.

The above concerns relate to the administrative difficulties that a commercially oriented corporation such as Hydro would experience, difficulties that a government department would not face. What follows next are our concerns of a more general nature with the specific requirements of the legislation.

Operational audits should be exempted from the access requirements. We strongly feel there are valid and persuasive reasons for this suggestion. Operational audits are internal reviews of the operation of departments and/or divisions and the effectiveness of their programs. The audits result in very candid assessments of operations. They are important to Hydro for the following reasons:

First, these audits are essential to identify areas for improvement in seeking greater efficiency in our operations; second, their success depends upon honest and frank evaluation of work operations; and, third, it is essential to have complete openness between the auditor and the auditee. Without such an exemption, Hydro's operational audit, a most highly developed and effective program and a role model for industry, will be rendered ineffective.

Within the legislation, there should be a mechanism to prevent a requester from dividing one time-consuming request into separate requests, each with a two-hour gratuitous search period. This would prevent frivolous claims and would also prevent excessive administrative costs from being foisted upon electrical power consumers.

Under section 17, third-party information, we understand that there is to be no discretion on the head of the institution and that it is a mandatory exemption. We support this amendment. In subsection 17(2) and subsection 18(3), which overrides the exemption where the public interest outweighs the interest of a third party or institution, we seek clarification in both the definition of the terms and also on whom the onus rests to prove which

interest outweighs the other. Without both, the subsections are too vague to be useful.

We believe there is an excessive burden imposed on Hydro and its employees in the requirement that the institution make all the necessary inquiries to determine whether another institution has custody or control of a record. In many areas of the province, where we have small administrative offices--and there may not be government offices--we would, in effect, become clearing houses for all government records.

We cannot justify adding additional trained people to administer the Hydro access requirements and anticipate using current clerical staff on an occasional basis. This is anticipated to be a workable solution to accessing Hydro information. However, if we must act as general government access co-ordinators, it would become an additional, burdensome and expensive administrative chore. We do not feel it is appropriate and justifiable to impose such requirements on commercial institutions such as Ontario Hydro.

One matter of great concern is the review and appeal procedure, both as it relates to the Information and Privacy Commissioner and to the courts. There is a strong possibility that the procedural provisions in the bill are not sufficient and that procedural fairness or the rules of natural justice will demand that the requester and/or his or her legal counsel be given access to a copy of the record before the hearing requirements of the legislation are fulfilled.

One matter of great concern is the review and appeal procedure as it relates to both the commissioner and the courts. There is a strong possibility that the procedural provisions in the bill are not sufficient and that procedural fairness or the rules of natural justice will demand that the requester and/or his or her legal counsel be given access to a copy of the record before the hearing requirements of the legislation are fulfilled. If a record is a security diagram of our nuclear plants, then any form of release or review by anyone would lead to serious erosion of the required security and wellbeing of the installation.

Finally, the public interest override section, section 11, will allow and require the courts, upon an application for certiorari and mandamus by any person or group, to examine much of the activities of Ontario Hydro to determine whether there exists any "grave environmental, health or safety hazard to the public." This presents the possibility of the courts reviewing and pronouncing on the public policies and practices of Hydro, the Ministry of Energy and the provincial government. We do not believe the courts are capable or qualified to do so and seek protection from such a possibility.

We thank the committee for this opportunity to bring out our concerns to the Legislature with the sincere hopes that if our concerns are met, the open-door policy of Ontario Hydro will open even wider.

Ms. Gigantes: Thank you for your presentation. It is in the fine tradition of Hydro's attitude toward sharing information with the public. It raises many questions in my mind, as somebody who has followed that tradition with great interest over the years.

I wonder whether you could explain on page 3 of your brief the way in which Hydro operates that enables it, unlike other institutions, to avoid having programs with records attached to them. Having looking over Hydro

documents of activities for many years, I recall many descriptions of programs. They seemed to generate vast numbers of records, which seemed to me to have been filed under subject titles. I am wondering what you are alluding to in this description of a major difference between the way Hydro operates and the way a ministry of the government operates.

Mr. Regasz-Rethy: What is indicated there is the way we see a government office operating, having a number of people to administer a particular program. By and large, the program kicks in once a member of the public comes under the auspices of the program. That process begins with a record and the record is tracked and followed through. That is far different from our being basically a large construction and marketing company. For instance, if we decide it would be necessary to construct a power plant in some part of the province, it is not based on a single person falling under a program. We study the programs and come out with a determination of various scenarios all leading up to the construction of the plant.

Ms. Gigantes: Much as Management Board of Cabinet would do in the construction of a new justice building in Ottawa.

Mr. Regasz-Rethy: Yes.

Ms. Gigantes: I wonder whether there is some confusion in your mind--perhaps you can help me on this--about personal information and operational information. Does what you are saying here on page 3 allude to personal information? You talk about a member of the public going to a ministry and then the program kicking into operation, if I recall your phrase.

Mr. Regasz-Rethy: This was not alluding to personal information. It was alluding to operational records.

Ms. Gigantes: Such as Hydro's conservation program.

Mr. Regasz-Rethy: Yes.

Ms. Gigantes: How is that different from a Ministry of Energy conservation program in terms of the kinds of records it generates?

Mr. Regasz-Rethy: Not being familiar with the Ministry of Energy programs, unfortunately I cannot comment on that.

10:30 a.m.

Ms. Gigantes: I turn to your item (ii) on page 4. Again, I seek some clarification here. What you seem to be suggesting is that the records and the information that Hydro has is, in some generic fashion, a different beast from any other kind of information or records that anyone else in the other named bodies that will be covered by this legislation would be dealing with, have access to, generate, file or disseminate within the administrative body.

Mr. Regasz-Rethy: When we say we deal with information, that means we have it passed over to whomever in the corporation has a need to know that information. That is not controlled in any way. It is up to the employee to know what information he or she needs and to get it. There are no controls put on that. It is not considered part of a record it is possible to track. Historically, we have always worked on that basis.

What I see the act doing is imposing a much stricter regime on the corporation to classify most of this information as records so we always know where such a record may exist and where it may be tracked or indexed. That is the administrative difficulty we see.

Ms. Gigantes: I do not know how long you have been with Ontario Hydro in your role, but certainly when it was providing masses of documentation to the select committee on Ontario Hydro affairs of this Legislature, it managed to track down all the materials the legislators were looking for. It did not seem to have difficulty ascertaining where certain letters, documents, program reviews, evaluations or any of these might be found within the labyrinths of the Hydro information system.

Mr. Regasz-Rethy: I think you have made the assumption that it posed no difficulty.

Ms. Gigantes: No, I did not; but the assumption you are making is that the difficulty it posed was somehow unacceptable.

Mr. Regasz-Rethy: I believe the difficulty posed for a wide-scale provision of such information would be massive. We do it for the energy board, and it requires an awful lot of effort by an awful lot of people. To do that for anyone who comes through the door, the administrative task is extremely difficult. That is what we are trying to say. We are not trying to say we want to avoid doing that. It is just that the administrative effort to go into that will be quite large.

Ms. Gigantes: You talk at the beginning of your submission of the number of requests with which Hydro is greeted each year. As I recollect, the number was around 500. Am I right in remembering that?

Mr. Regasz-Rethy: Our inquiry and research department has 5,000 every year.

Ms. Gigantes: Do you have difficulty coping with those requests?

Mr. Regasz-Rethy: No, because there is a major difference in that we provide information to those people. We do not provide the records to them. We do not need to find out where these records exist in the corporation. People come in seeking information and we provide it.

Ms. Gigantes: How do you find all the information unless you know where the record is? I do not understand. What kind of information do you provide? Is this brochures and so on?

Mr. Regasz-Rethy: It is very wide-ranging. Someone may come in and ask a very simple question. He may want to know how many tons of material went into one of our nuclear plants. We can provide that information because it will exist in many forms on many people's desks. However, if he were to ask us to provide all records which contain that bit of information, we would have somehow or other to scan the entire corporation to find out where those records exist. That is the difference I am trying to point out. We have been dealing in information, providing it, and we are happy to do so, but as an operating commercial corporation, we do not deal in records. That is where the administrative difficulties come in.

Ms. Gigantes: May I ask what Hydro's budget is these days for what is called public information--I do not know what that program is called currently--whereby you do public advertising and supplying of educational materials, tours and so on for members of the public?

Mr. Regasz-Rethy: I have no idea.

Ms. Gigantes: Would you be kind enough to get that figure for us so we could take a look at it?

Mr. Chairman: I am having trouble with this. I appreciate the line of questioning here. I do not understand what you are saying. You are saying you have all this information and your employees and the public can get it, but you cannot find it.

Mr. Regasz-Rethy: No. We are not saying that. If the public requires all the records to be disclosed--

Mr. Chairman: Are you saying you could not do it?

Mr. Regasz-Rethy: I do not think we can get them all without a major administrative task.

Ms. Gigantes: It sounds like a very bad filing system at Hydro.

Mr. Regasz-Rethy: You have to realize that we have 23,000 employees, nine branches and 29 divisions. This is not a small corporation. It is a major task to scan the corporation to find out exactly where all the records are. The legislation would require us to know where all the records are.

Mr. Chairman: Are you saying you do not know where the records are now?

Mr. Regasz-Rethy: The people who have control of the records know where they are, but there is no overriding body that can say with certainty that the records exist here, here, here and here.

Mr. Chairman: That is my problem. I find that a little difficult to understand. The people must know where the records are kept, they must know them, they must be able to use them, and yet you are making an argument that they do not know where they are and that it would be a monumental task to find them. I find that a little hard to comprehend.

Mr. Regasz-Rethy: If a record is requested, the act seems to require us to say with certainty, "Here are all the records that deal with this particular bit of information."

Mr. Chairman: You are saying that is very difficult for you to do, from an administrative point of view.

Mr. Leonoff: We do not have central records. We diversify our records retention throughout the corporation. Each branch keeps its own records. We have a central records department for official documents, in which we have a central filing system. That reports to me. We are trying to say that we can get the information requested, but it would be difficult for us to say with all certainty that the information we supplied exhausted all the information on that subject in the corporation.

Ms. Gigantes: What are official records?

Mr. Leonoff: There is a definition on official records which I do not have, but it would be anything we have to keep permanently for legislative reasons, tax reasons or that type of thing.

Ms. Gigantes: Would you be kind enough to furnish us with your definition? It might cover most of the requests you might expect under this act, might it not?

Mr. Leonoff: I can easily get that for you.

Ms. Gigantes: Do you think it would cover most of the requests for documentation that you would be subject to under this legislation?

Mr. Leonoff: That is pure speculation on my part.

Ms. Gigantes: Let us have it.

Mr. Leonoff: I will give you a definition. Why do you not let me know what you think?

Ms. Gigantes: No. Let us have your speculation.

Mr. Leonoff: I tend to doubt it. Official records tend to be the final piece of paper. It would not cover such things as the steps which have to take place before the official record is put down on paper. I do not think that would be the case.

Ms. Gigantes: Do you expect that the documentation leading to the final official paper in any given process you are looking at operationally would be available and would be relatively easy to trace? The documentation existing in your official record would tell you which branches or divisions had been involved in the operational decision.

10:40 a.m.

Mr. Leonoff: Again, for the sake of repeating, all we are trying to say to you is that the way the bill is now drafted, there is a certain burden upon us to provide all the information on a certain subject. We have the information, but if I, for example, had to sign a piece of paper that said, "Yes, this is all the information we have on a particular subject in Ontario Hydro," I would have difficulty doing that. I would never be 100 per cent sure. We do not have a super central records file that covers every single piece of paper in Ontario Hydro.

Ms. Gigantes: All one could ask of you under the legislation would be that you would do your best to be sure.

Mr. Leonoff: I hope I always do my best. I will provide the defined official records file.

Ms. Gigantes: On page 5, under item (iv), you refer to "working papers." Are these the papers you are concerned about that exist in the divisions and are not contained in your official records file?

Mr. Leonoff: Working papers would not be contained in the official records file. Working papers would be those which may or may not have been implemented, or which may have been developed and later abandoned because for one reason or another they were not adopted. They would be scattered.

Ms. Gigantes: They would be scattered, but they would be categorized, indexed and filed under subject heading. We had no difficulty getting those papers. It did not take Hydro long to produce them when we asked for them.

Mr. Leonoff: If a paper was abandoned because for one reason or another it was determined it was not practical to use it, for example, that paper might be sitting in someone's desk and never have reached anyone's file.

Ms. Gigantes: A lot of papers that are sitting on desks are not in the files yet. However, when they are on a desk, one usually can find them and one is aware they are there.

Mr. Regasz-Rethy: If one knows which desk to approach to look for them; that is the real problem.

Ms. Gigantes: I have faith in the orderly conduct of business at Hydro.

On page 6, the suggestion of the difficulty and danger to the entire organization of Hydro that would be entailed if operational audits were to be accessible to members of the public almost suggests to me that we are dealing with something akin to the Department of National Defence. If an operational audit of a department or a division and the effectiveness of a program is requested by a member of the public, it surely would be possible for argument to be made by the corporation about whether the entire operation of Hydro was going to be jeopardized by the release of such documentation.

Mr. Regasz-Rethy: I do not think that is what we are saying; we are saying the program of operational audits would be jeopardized. That is very important to us because of the success we have had with it in the past. That success was based on the fact the auditees were assured complete confidence in what they were telling the auditors. We cannot assure that any longer.

Ms. Gigantes: Can you give me an example?

Mr. Leonoff: Of an operational audit?

Ms. Gigantes: Yes, of one that you think would be endangered.

Mr. Leonoff: Any operational audit goes beyond the procedures in a certain division or section. For example, it would deal very candidly with the performance of a group or individuals. It would say either someone was doing a good job or improvement is needed in a certain function.

Ms. Gigantes: That becomes personal information.

Mr. Leonoff: You cannot separate it in an audit.

Ms. Gigantes: You would be inhibited from releasing anything which would personally identify people.

Mr. Leonoff: I appreciate that, but one does not mention names in these things. If you want an example, when I joined Ontario Hydro, one of the first things we had was an operational audit of the law division. It was a candid assessment of how the Ontario Hydro law division functioned. It had some criticism about that function and some pluses. I kept that confidential, even inside the corporation, because--

Ms. Gigantes: Because it could lead to the identification of individuals.

Mr. Leonoff: More than that, it could lead to a criticism of a certain function within the corporation without knowing all the facts behind it. It is not simply individuals; it is a criticism of how a certain function operates inside the four walls of the corporation.

Ms. Gigantes: That would be dealt with by Hydro in a context and there would be other documentation that would explain that context.

Mr. Leonoff: I am not concerned about the context of explaining it internally. I am concerned about the external release of that information and the effect that would have on individuals who are interviewed for the audit process.

Ms. Gigantes: Why do you say in the first paragraph at the top of page 8 that under this legislation you feel you would be called upon to act as general government access co-ordinators?

Mr. Regasz-Rethy: There are sections within the act that say that if an individual comes requesting information from one government institution or body and the record is more properly found at another institution, or another institution or ministry has a greater interest in it, then the original institution is duty-bound to transfer that request. That will be very difficult for us in places like Fort Frances or wherever, where the people are clerks of Hydro and have very little knowledge of the workings of the government of Ontario as a whole.

The person in Fort Frances, rather than going directly to the Ministry of Revenue in Oshawa, for instance, can simply walk into his regional Hydro office and say, "I demand to know information on this, that or the other matter." We are duty-bound to have knowledge and to aid that person in finding where that information may reside in the general government system and we are duty-bound to send that request over.

Mr. Warner: There is something wrong with that.

Ms. Gigantes: In the second paragraph on page 8, you say, "There is a strong possibility that the procedural provisions in the bill are not sufficient and that procedural fairness or the rules of natural justice will demand that the requester and/or his or her legal counsel be given access to a copy of the record before the hearing requirements of the legislation are fulfilled."

That seems to suggest that the person who walks into the Fort Frances office might end up being given, as you continue in the paragraph, a security diagram of a nuclear plant before any of the process of a decision by the head, in this case the chairman of the board of Hydro--

Mr. Regasz-Rethy: That is not what the paragraph meant to say. The paragraph meant to say that in an appeal procedure before the Information and Privacy Commissioner or in a review on matters of procedural fairness before a court, there is a strong argument to be made that in that adversarial situation, the person whose rights will be affected must have exposure to all the evidence that may impact on him or her and his or her rights.

That argument scares us because if it deals with a security matter, the very possibility of a security diagram being let out to anyone seriously erodes the security in that installation.

Ms. Gigantes: Let us take this through step by step. The person goes into your Fort Frances office. There is a decision made by the head, who in this case would be the chairman of the board of Hydro, that information on the security diagram should not be released, and an appeal is then launched to the commissioner. Are you suggesting the commissioner would release the information?

10:50 a.m.

Mr. Regasz-Rethy: Under the terms of the legislation, the commissioner is not to release the information. At the commissioner's level, there is not that much--

Ms. Gigantes: The commissioner would order the release of the information.

Mr. Regasz-Rethy: The commissioner is not to allow the other party to view the record. It is the commissioner who will make up his or her mind. An appeal from that quasi-judicial function would lie on matters of procedure to a court. In front of that court, an argument can be made saying: "Because I am in front of you, the rules of natural justice require me to know the case I am to meet. To meet and build my case, I or my counsel should have a chance to view the record." That is what we are worried about.

Mr. Haggerty: I would like to direct some questions to page 2 in particular, where I have some difficulty following the comments. It reads:

"As a crown corporation, we understand the desirability of including Hydro in the legislative scheme. However, as a commercial enterprise competing in the energy marketplace, we feel that it is inequitable to subject Hydro to a greater regulatory burden than our private sector competitors."

I find this difficult to follow. We know you have complete control of the generating and marketing programs in Ontario. What private sector competitors are you talking about?

Mr. Regasz-Rethy: In the energy marketplace, we compete against the gas and oil companies. House heating is a very simple example; houses are heated by gas and oil. Those are our competitors for that particular application. In providing motive power for industry, again we have competition in the oil and gas companies. Those are the competitors to which we are referring.

Mr. Haggerty: Those are who you feel are your competitors. I understand you have about 16 per cent of the market in Ontario, but we are talking about electricity. The way I look at it, your competitor is within your--

Mr. Leonoff: We do not look at it that way.

Mr. Haggerty: You go on to say, "In the marketing of electricity as an energy source, we seek to be on the same competitive footing as our competition, something that is impossible if access is to be given to the background documents, studies and so forth in electricity." You still use oil. You have generating plants that are sitting idle where you could be using oil. You are using coal. You are using quite a number of different sources of energy supply. In fact, I imagine you even use some gas in certain places in your generation program.

You say you want an exemption similar to what they have under federal legislation, and Petro-Canada is mentioned here. I suppose if we had freedom of information today, we would have the books open to find out why in hell it is that we are paying more for gas than anybody else. We talk about competition, but I am wondering. From what you say, it is pretty hard to follow that approach.

Mr. Leonoff: First of all, we are not talking about a complete exemption. If you will note at the end of that paragraph, the two functions we are talking about are marketing and new business ventures. I do not think it is wise to say we want complete exemption from the act; we do not. As for competing, there is no question that we compete in the energy sector marketplace, and we compete quite vigorously. In the marketing function, we feel it would be a burden on us to have to inform our competitors of certain plans in our marketing when reciprocity does not exist.

Mr. Haggerty: We can pretty well see that by your advertising. That is how you compete with your competitors, by advertising on radio and television, how to keep your feet warm.

Mr. Leonoff: That is only one aspect of it.

Mr. Haggerty: You go on to say that of the two areas which you feel should be exempt, one is marketing functions. What you are suggesting here is that if we did not have freedom of information, we would not have the information that is required when you go to the Ontario Energy Board for a rate application increase. We know the gas industry has to go that way.

Mr. Leonoff: Yes, and if the Ontario Energy Board asks for certain information, we provide it.

Mr. Haggerty: Do you?

Mr. Leonoff: Yes.

Mr. Haggerty: The suggestion here is that if you went in as a crown agency, you would be exempt and perhaps we would not get that information.

Mr. Leonoff: No. All we are saying is that, if the Ontario Energy Board asks for certain information, we provide that. We also request the Ontario Energy Board to ask our competitors for similar information, as we did last year when the gas company went in front of that board. However, there are no guarantees that forum will in future obtain that information from our competitors, so we will have to provide it and we are not sure about the future. If there is marketing information that is not requested by the Ontario Energy Board, then we should not have to divulge that to our competitors. You

nave to understand it correctly. If you are doing any research, that is what has been happening under the American legislation, where the majority of requests for information come from competitors.

Mr. Haggerty: You are asking to be exempt under that section. You could deny the Association of Municipal Electrical Utilities of Ontario interesting facts and figures that might relate to the end cost to the consumer.

Mr. Leonoff: I am not certain of the kind of marketing information we may or may not divulge now. One would assume that our detailed marketing plans, which would be of value to our competitors, probably would not be divulged now. Certainly, if they asked for it, it would not be divulged now, but general thrusts and general types of programs are.

Mr. Chairman: Can you clarify something for me? My reading of the act is obviously quite different from yours. Mine indicates pretty clearly that all your concerns would be protected by this act. You would not be divulging information, for example, on marketing strategy and things such as that; the protections are there for you. What causes you these concerns?

Mr. Regasz-Rethy: They are concerns that, first, the request can be made, denied and an appeal procedure launched. We then have the onus of proving the exemption. If we can have that sector exempt entirely from freedom of information and access to information, we would not have to go through the ongoing process, which we anticipate will take up a large portion of requests to Ontario Hydro.

Mr. Chairman: I appreciate that there is going to be some inconvenience here, but why the hell would we bother passing a bill if we exempted you totally? It seems to me the name of the game is to try to work into the bill reasonable exemptions on economic information that might damage you in the marketplace. It seems to me the provisions are there; any kind of trade secret is protected. These are the same concerns the Canadian Manufacturers' Association had yesterday.

It is not the intention of this bill to make you divulge all your innermost fantasies to the public, but to provide an occasion where the public can legitimately make a request for information, which is not too dissimilar from what you now do. You have substantial amounts of protection in there. I am anxious to pursue why you feel the protections written into the act are not adequate.

Mr. Regasz-Rethy: They are adequate, but from an administrative point of view, we are seeking a very narrow class of exemption as it relates to our marketing function.

Mr. Chairman: Do you feel the provisions of the bill do not protect you enough?

Mr. Regasz-Rethy: That is correct. It would be administratively easier for us to deal with it if we had that narrow exemption.

Mr. Chairman: I do not doubt that. It would be administratively easier for you to say people cannot ask any questions about Ontario Hydro, too, and we are not about to allow that.

Mr. Regasz-Rethy: We certainly would not say that because we have been providing information. We support the legislation.

Mr. Chairman: All right.

11 a.m.

Mr. Haggerty: If we had had the freedom of information bill before the select committee on Ontario Hydro affairs--I see Mr. MacDonald, the former chairman, sitting there--we would not have had to bring forward a bill like this today. There is information that still does not come clearly through to the select committee.

Let us take a look at the second question with which we are dealing here "...the operation of our new business ventures division...information leading to our marketing strategy. In our new business ventures division, where we seek international markets for our services and technology...." Are we talking about Candu?

Mr. Regasz-Rethy: Supporting the activities of Atomic Energy of Canada Ltd. in its sale of Candu is just one small portion of the activities of our new business ventures division. We provide services around the world, such as training services, commissioning services and operating services to various utilities, particularly in developing countries. I cannot give you an idea of the revenues last year for new business ventures division. In the past two years, we have created a division that focuses solely on selling the bottled technology, the bottled expertise of Hydro to other utilities around the world. These are the activities within the new business ventures division to which we refer.

Mr. Haggerty: You are moving in quite an area in international markets.

Mr. Regasz-Rethy: Yes.

Mr. Haggerty: Are you selling the technology?

Mr. Regasz-Rethy: Our focus is not to sell outright. Our focus is to provide the services that might include the technology.

Mr. Haggerty: In other words, you are passing on special areas of technology that have been paid for by the consumers of Ontario.

Mr. Regasz-Rethy: We are passing it on, but receiving a price for it. Rather than let it wither in Ontario Hydro, we manage to get our money back by having a foreign utility pay us for that technology.

Mr. Haggerty: You do not know what the cost is. When we are talking about Candu, for example, what security is there if you are passing on technology in the nuclear area?

Mr. Regasz-Rethy: We do not pass on any technology that has security implications. We work very closely with AECL and the Atomic Energy Control Board with respect to any restricted technology.

Mr. Haggerty: Who makes the profit? Is it Atomic Energy of Canada Ltd.?

Mr. Regasz-Rethy: We make the profits. As a simple example, when AECL quoted for the reactor in Romania, we were there to commission it because we have expertise in the commissioning of nuclear reactors. For that we received funds. The technology that might have been transferred over there was in the training of Romanian nationals in the commissioning process, but there is nothing secretive or restrictive about that information.

Mr. Haggerty: Is your new business ventures division a corporation within the corporation?

Mr. Regasz-Rethy: It is a division within Ontario Hydro.

Mr. Leonoff: It is a division of Ontario Hydro, but it works on a profit centre basis. In other words, it is the only division of Ontario Hydro that keeps its books on a profit basis. We charge for legal services; we actually charge this group for our legal services. It keeps books and it makes a profit.

Mr. Haggerty: Why would you want it exempt if this is being paid for by the consumers in Ontario?

Mr. Leonoff: It is because we are competing in the world market. We have to make proposals. We are competing with four or five different utilities and corporations around the world. For example, on a project in Africa, if our costs or any information was available to these competitors our chances of receiving the contract would be substantially lessened. For example, often you are putting in tenders. It would be like an open tender policy. The only difference would be we would be the only ones to be open tender.

Mr. Haggerty: Surely in the private sector here in Canada and Ontario, we already have consulting firms that go out and do the same thing.

Mr. Leonoff: No, sir. We do not compete with the private sector. We have an agreement with the private sector that says we will not compete with it in the world marketplace. We market only expertise that is not in the private sector. We have a specific agreement on that. We co-operate with the private sector. We help it and we will joint-venture with the private sector, but we will not compete with a Canadian private sector corporation for the same contract.

Mr. Haggerty: Acres Consulting Services Ltd. in Niagara Falls is a worldwide engineering firm. They are building steam-generating plants. They could be coal-fired, oil-fired or hydraulic. Why would you want to compete with the private sector?

Mr. Leonoff: We will not compete with a private sector corporation in the world marketplace on the same project.

Mr. Haggerty: We will have to get into more details at some later date.

Mr. Leonoff: Not with me, by the way.

Mr. Chairman: Before we proceed, if you want to have little chats with one another, there is a nice hall outside that can accommodate you. There are lots of places to go, but while we are in this room, could we pay a little attention to the witnesses?

Mr. Sterling: Actually, I am rather amazed at Hydro coming in and complaining about this act. I really am. As I read section 18, in the words of the Attorney General (Mr. Scott), the chairman of Hydro--or presumably the head of your association or company--will basically have the discretion to release information or not. It is mostly under section 18, from the arguments I hear today. The only ground for appeal to the commissioner is on the basis of whether it is in the public good to reveal that information.

I know there are disadvantages in being a public corporation, but there are also advantages. You can borrow money at a much cheaper rate than people in the private area because of the backing of the Ontario government. You have the backing of the Ontario government in many of your endeavours.

Are you saying that as a public corporation you should not be subject to the scrutiny of an independent commissioner who says it is more in the public good that the information be revealed?

Mr. Regasz-Rethy: Perhaps our message is not coming out clearly enough. We are in support of the legislation. In the past, we have always given out vast amounts of information on a purely informal basis.

We are here today to say that some slight dislocations will happen within Hydro, administrative difficulties that we will have to endure, if the bill is passed in its present form. Those are purely administrative matters. The concepts and principles upon which this act is based have the full support of Ontario Hydro.

I am reading from a corporate policy that was last dated 1984, and I do not know whether that is the date it came in or the date of the last amendment. Here the governing principle is: "At its initiative, Ontario Hydro shall provide information to customers, employees, the public, public bodies and agencies and other corporations and associations to contribute to the awareness and understanding of Ontario Hydro's activities and plans. Ontario Hydro shall respond to all requests for information relevant to Ontario Hydro's activities." There are some exceptions set out which simply mirror the exceptions that are already in the act.

We have no difficulty with this. The only difficulty we have is administrative difficulty, because we are a commercial organization based on information, not based on records. If I can put our whole message here today, that is it in a nutshell.

Mr. Sterling: How many employees are there in Ontario Hydro?

Mr. Regasz-Rethy: There are 23,000 employees, nine branches and about 30 divisions.

Mr. Sterling: I am a citizen of Ontario. I represent 70,000 citizens in Ontario. If they want access to information about Ontario Hydro, who the hell should be at the negative, a 23,000-employee company or my constituents? It is amazing.

Mr. Leonoff: With great respect, sir, I take umbrage with your tone. I do not understand what you are saying to us. We are here saying that we support the principle of the bill. We have come here and we have said--

Ms. Gigantes: Just do not apply it to us.

Mr. Leonoff: --there are a few drafting problems. We are giving you our opinion. We are not against the act. We support the act and we support the principle. I do not quite understand your thrust.

11:10 a.m.

Mr. Chairman: Members are having great difficulty with your saying: "There is no problem in giving out information. We support the act, but we do not classify them as records." We are having some difficulty understanding how you are different from every other agency that is listed under this bill in terms of retrieving information and providing it to the public. Everybody is going to experience inconvenience and administrative changes. That is a given. We are trying to determine what argument you have that says you are different from all the other agencies that will be inconvenienced and will suffer some administrative cost. What is the difference? That is what we are looking for.

Mr. Regasz-Rethy: I do not think we can comment on how the other agencies will deal with the act. We simply wish to point out to the committee that if there were some way of amending the bill so records are not the prime operative thing that people gain access to and request access for and that must be provided and thereby indexed and tracked--

Mr. Chairman: To intervene for a second, that is the very nature of the bill. It is to say to the public: "You will get the actual records you want, not what Hydro wants to tell you. You will have an opportunity to see the actual matter of record." That is the distinction, as opposed to a public relations exercise where you provide what you think the public should know. The difference is that the public now has the right to see the actual records you keep. That is the distinction we are trying to make here.

Mr. Regasz-Rethy: We realize how important it is and we realize that what we are trying to do here is balance some competing interests. The interest on the public's part is the access to information and we support that wholeheartedly. There are competing interests within Ontario Hydro in that we would love to do it but the administrative burden on us, if we must provide all these records, is going to be very great.

I cannot give an answer to the committee today on how we can overcome that problem. We are here to point out that it is a problem and perhaps somewhere or somehow it can be overcome. I do not know.

Mr. Chairman: We are trying to determine whether that problem is any different for you than for any of the other agencies that will be impacted by the legislation.

Mr. Regasz-Rethy: I have not spoken to the other agencies about this matter. I cannot tell you.

Mr. Sterling: If this committee in its wisdom saw fit to change section 18 to make it a mandatory section, which I am somewhat prone to do, now would it affect you if it were a "shall" decision and your head did not have the initial discretion to decide whether to disclose? He has the right and he is going to decide that anyway and invite confrontation with the information commissioner.

The way the bill is written now is a farce, in my view. The Attorney General (Mr. Scott) is trying to pretend he has a freedom of information bill but it is not a freedom of information bill as it is written. Once you give

discretionary decisions all over the place, you are saying the information commissioner cannot look at it.

Mr. Regasz-Rethy: In response to your first question, if section 18 became a mandatory section, it would mean there would not be so many appeals to the commissioner. That is the only difference because, of course, one would still try to bring an appeal to the courts.

Mr. Sterling: So there would be faster decisions in terms of what was and was not available. For instance, if the commissioner determined that your internal audits were subject to public disclosure, that would become known very quickly and you would have to disclose them. In other words, it would be better in a lot of ways if it were a mandatory section.

Mr. Regasz-Rethy: It would be better, putting it in those terms, but, as I say, it would overcome a very small part of the implementation of the act, not a great part. It would not cause us a great deal of concern one way or the other.

Ms. Gigantes: You like the spirit of the proposal; you just do not like the practice of it.

Mr. Regasz-Rethy: Yes. What I foresee, once the legislation comes into force, is that our informal information-giving practices will simply continue.

Ms. Gigantes: Some of them have been very formal. Take a look at the record of the select committee on Ontario Hydro affairs. We did not have to subpoena documents but we got them formally.

Mr. Regasz-Rethy: Those are very formal but, by and large, in the 5,000 inquiries we get per year from citizens, from school kids to engineers, everybody has been very satisfied with the information given.

Ms. Gigantes: There have been a lot of people who have not been. In fact, one major impetus for this bill in Ontario has been the experience of the Ontario public and its representatives in trying to get information about a public corporation: Ontario Hydro.

Mr. Regasz-Rethy: I cannot comment on that opinion.

Mr. Sterling: Can you name any documents that now will be made available under the Freedom of Information and Protection of Privacy Act that heretofore were not made public?

Mr. Regasz-Rethy: It is interesting that you should ask that. On the way over here this morning, Mr. Leonoff and I were trying to figure out which ones would be. There would be very few; perhaps our board of directors' minutes of meetings and the operational audits would be available. Other than that, I cannot think of too many.

Mr. Sterling: This act is going to do little to open up Ontario Hydro to the public.

Mr. Leonoff: It is open now.

Mr. Sterling: To further open it.

Mr. Leonoff: It will be more formalized because of the nature of the legislative format as compared to previous situations, so in that regard it will be more. As far as information is concerned, I do not think we will give very many documents that we are now restricted. There are the ones we mentioned in the brief, plus the board minutes; traditionally, we have not given out board minutes. There are not too many others. If there are, I have not thought of them; although I have to admit I have not sat down and had a session of hard thinking.

Mr. Sterling: Having said that, where does the fear of your administrative burden come on? If you can think of only two documents that are going to have to be produced, you can surely put those documents together.

Mr. Regasz-Rethy: We have been providing information to the satisfaction of the inquirers; now we will have to provide the records themselves. That is where the administrative burden comes in: to have a complete index control and tracking system of all the pieces of paper which float through the corporation. That is made especially difficult in that the corporation is commercially-oriented and not a service, such as a ministry might be.

Mr. Sterling: Just as a matter of history to some of the other members, in a lot of jurisdictions the revamping of the management of information was the impetus for bringing forward this kind of legislation. Perhaps it is time Hydro considered such a revamping, if that is going to be a burden.

Mr. Regasz-Rethy: One of the suggestions we made in this brief was that we have a date, that all records coming into existence from this day forward be subject to the act. This bill does not have that. It would make our lives very much easier in that we would not then have the burden of going back to try to find which records are in which files, index them and make them available for production within 30 days, 60 days or 90 days. That would do an awful lot to lessen the burden we are speaking of.

Mr. Sterling: As I understand it, you can extend almost for ever under the bill, is that not correct?

Mr. Regasz-Rethy: I believe the bill allows one extension but there is no limit as to the date of the extension. However, the spirit of the bill is that information is given as soon as possible. In good faith, we would not be able to tell someone who requests access, "You will not get your information for six or nine months." That is not the spirit; it is not the intent. We would not do that.

11:20 a.m.

Mr. Chairman: We are running a bit behind schedule. I am going to thank you for appearing before us this morning and call on the next group, which is the Canadian Environmental Law Association.

Mr. Regasz-Rethy: Thank you, Mr. Chairman.

Mr. Chairman: Appearing this morning is Grace Patterson, who will present the brief. I believe members have copies of it. Just to make you familiar with the process, generally we offer you the opportunity to make whatever introductory remarks you like and then, as you may have noticed, members ask questions--occasionally even questions of the witnesses.

Mr. Warner: When they get on the list.

Mr. Chairman: If they are good boys and girls, they get on the list.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Ms. Patterson: I will make some general comments and then some relatively specific comments. I look forward to questions.

First, I would like to state that the Canadian Environmental Law Association is an environmental law legal aid clinic which deals with a wide range of environmental topics. Strong access to information legislation at both the federal and provincial levels has been a long-standing and important goal. CELA's proposal for an environmental bill of rights, as well as several private members' bills by the former Liberal leader and by the current Minister of Health (Mr. Elston), call for the right to access to information concerning the environmental consequences of government or private activities.

We depend on detailed information provided by governments on behalf of our clients because of the disparity in the ability to amass the information. Government is one of the best sources of environmental data. CELA welcomed the early introduction of Bill 34 but we believe essential changes must be made to arrive at the purposes of the act. We think in some cases the act actually restricts access which is now available.

I would like to stress at the beginning the lack of appeal of the majority of refusals by a head. That takes away from the effectiveness of the purpose of the act. We think that is an extremely weak provision and I will discuss it in greater detail later.

On page 4 of the brief, I deal with obligations to disclose in section 11, which creates an overriding obligation to disclose a record "as soon as practicable" where a head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public.

We think the words "grave hazard" create undue limitations on the use of that section. As an example of the problems we foresee, we are using section 7 of the Environmental Protection Act, a stop-order provision, which states the director may issue a stop order in the event that a contaminant which poses "an immediate danger to human life, the health of any persons, or to property," is discharged into the natural environment.

In the case called *Re Canada Metal Co. Ltd. et al. and MacFarlane*, the court overturned a stop order issued by the director for discharging lead and lead compounds, even though the lead emissions from Canada Metal were excessive and medical affidavit evidence was introduced attesting to the significant adverse human health impact. For the court, an "immediate danger" required a very stringent test. We think "grave hazard" comes into the same category and is too onerous with respect to establishing the right to information.

Further, looking at section 13 of the Environmental Protection Act, for example, it prohibits the deposit, addition, emission or discharge of a contaminant that causes or is likely to cause impairment, injury or damage to property or plant or animal life, harm or material discomfort to any person and a broad range of impacts; not just hazards but impacts of all sorts.

The confidentiality of the Environmental Protection Act, section 130, allows, although it does not require, the release of information respecting the deposit, addition, emission or discharge of a contaminant. As worded, we think the Environmental Protection Act is broader than this bill.

As a comparison, we are using the Quebec Environmental Quality Act, which has the improvement of public access to information as one of its objectives. That statute states: "Every person has the right to obtain from the environmental protection branch a copy of any available information concerning the quantity, quality or concentration of contaminants emitted, issued, discharged or deposited by a source of contamination." Presumably, if the Minister of the Environment is not in receipt of a record that contains the evaluation of a discharge of a contaminant under the Environmental Protection Act, under section 11 he may not disclose that record to the public if it does not reveal a grave hazard. We reiterate we think this is not as broad as the Environmental Protection Act and we submit the bill should provide a section similar to the Quebec Environmental Quality Act. There is a misprint on page 7. "Environmental Protection Act" should read "Environmental Quality Act."

We deal with cabinet records under subsection 12(1), and the basic point here is that currently the government puts out draft legislation and regulations for comment and we do not see why this should be included as a restriction under this bill.

Subsection 12(2) relating to cabinet record exemptions is dealt with in terms of time periods, and you can read our submissions on that.

Section 13 allows the head of an institution to refuse disclosure of advice to government subject to specific exceptions. Access to advice given to government is essential because it would act as a deterrent to misleading or incomplete information being presented to government. Further, the word "advice" is very broad. Much of that is already covered by other, more specific, exemptions. For example, sections 12 and 14 could include the advice received in executive council meetings or the advice received in law enforcement matters. If this bill really is providing access to information with only limited exceptions, section 13 should be completely eliminated.

There is a minor point in clause 13(2)(d) where an environmental impact statement is one of the things that should be included in access. We think that definition does not mean anything in the provincial legislation and the wording should be "environment" and "environmental assessment."

Subsection 14(1) dealing with law enforcement is also too broad. It is broad enough to refuse any matter being considered under any statute with regard to eventually leading to law enforcement. Further, there is currently no appeal from an exemption under subsection 14(1). Again, we talk about the provisions of the Environmental Protection Act.

To clarify the principle that access is to be broadened by this statute, we propose that there should be a general statement in the act that where any other statute allows access greater than provided by this act, the act shall not limit such access provided by other statutes. We think this should be in addition to what was proposed by the Attorney General when he said the act will state that any information available by custom or practice immediately before the act came into force shall not be precluded by the legislation. We think that is slightly different from saying that existing legislative provisions will prevail over anything that is more limiting. In fact,

subsection 60(2) says that this act prevails over a confidentiality provision in any other act unless the other act specifically provides otherwise. I hope it is the Attorney General's intent to make this specific only where it provides greater access. As it is, we are getting mixed messages. This really is an overriding provision that would make this applicable despite the fact that it might limit access available under other statutes.

11:30 a.m.

Subsection 17(1) deals with third party information and we understand it has been proposed for amendment. Our brief takes the amendment into account. It makes mandatory the refusal of information with respect to trade secrets, scientific, technical, commercial, labour relations or financial information supplied in confidence, implicitly or explicitly. We think this is also too broad. Trade secrets are a generally well-recognized exception to access to information, but here we have a standard that is imposed by the very person who has the greatest interest in keeping the information secret.

Section 17 assumes there is no difference between private business and public business. In the view of the Canadian Environmental Law Association, there is a very real distinction. Private business is a matter for corporations to disclose or not as they choose, but public business requires accountability from government, including government decisions with respect to regulations and other policy and program choices which affect private business. We do not think private businesses should be exempted if they are applying for approvals under legislation or getting any grants, licences, etc., from government. Without access to information, the government's performance in this area of granting licences, etc., is not subject to the requirements of accountability.

The points made on pages 15 and 16 deal with the broadness of economic interests as defined in the act and the broad refusal powers dealing with solicitor-client privilege, danger to health or safety of an individual or refusals with respect to personal privacy. We think those are self-explanatory, and I will not spend time here.

What I do want to spend time on and emphasize is section 46 and the minister's amendment. We had a confusing section before, which appeared to limit review of the discretion exercised by heads. Now we have a specific statement that says the commissioner shall not order a head to disclose a record where the commissioner finds that the head may refuse to disclose the record. That takes almost everything out of the purview of the commissioner and undermines the whole purpose of the act.

It is our position that section 46 should be rewritten to allow a person who has made a request to appeal to the commissioner any decision of a head under this act. CELA has supported the idea of an information commissioner who can provide an inexpensive method of appealing a government entity's decision to refuse access. To limit the commissioner's power to review the heads' exercise of discretion makes his role virtually useless. Surely the exercise of discretion by the head should be reviewable, given inherent conflicts in his role, as well as a lack of a court review on the merits.

I would like to emphasize here that we do not advocate a de novo review by the courts in all circumstances. The only reason we do not do that is on the assumption that section 46 will be amended to allow the commissioner to have a de novo review of every decision made by the head. Otherwise, we think

there should be a broad power to go to the courts. We realize that is more expensive, more time-consuming and more of an impediment to citizens in terms of access, but there has to be some method by which the head's decisions can be reviewed, and we think the commissioner is the appropriate one.

We also think the commissioner's deliberations should have a time limit in order that the access is not made superfluous in the end because of the delay on the part of the commissioner.

On page 19, we make a point with respect to costs for access to a record. Costs in the bill include search charges, costs of preparation of the materials, computer and other locating costs and shipping costs. It is our position that those fees should be eliminated and only the direct cost of photocopying should be charged. The principle that access should be made as inexpensive as possible must be maintained to fulfil the purpose of the act.

Part IV deals specifically with appeals. It does not specify that there is a right to judicial review or any other appeals to the courts. I have read the explanation of the Attorney General with respect to this lack of a right to appeal or judicial review. CELA submits that even though judicial review is available, in any event it should be included in the legislation for greater certainty. It does not change anything, but it states it specifically for an individual reading the bill.

Also, other provincial statutes allow for appeals to the courts on questions of law, which is a much more limited court review than that which the Attorney General is seeking to limit. He said, "appeals on law and fact." We think that gets into a de novo review, but appeals on the basis of an error of law alone we think should be maintained in the bill. There is a distinction between a right to judicial review, which deals with errors of law, and the right to an appeal on a question of law. One of the specific differences is that where you are seeking judicial review, the only option available to the court is to quash the decision of the person making the decision, whereas if you have an appeal directly to the court, the court can substitute its decision or send it back with directions. I think there is a specific, practical impetus for having such a right included in the bill.

The rest is summary, which I think you will have read or can read quickly. I propose to open it up for questions now.

Mr. Sterling: I thank you for your well put-together brief. You have looked into a lot of the matters I am very much interested in.

As you know, section 11 was lifted out of Bill 80, the bill I was responsible for in May 1984. It is the exact reading in that particular section, although it seems the Attorney General missed that point when he was talking about it when he introduced this bill.

I have talked to several people about section 11. Do you think that in fairness to third parties there should be some burden on the government to notify third parties before divulging this information? It is not in response to a request, so the third party who supplied this information or who is intimately involved with the information may have some counter-argument as to whether it should be divulged, or whether the information is correct or has been interpreted correctly. What do you think about that?

Ms. Patterson: I think that creates delays. If there is an interest in not divulging the information, there can be all kinds of reasons. The third

party might maintain it is not accurate, etc. If it is in the hands of the government and it has provided it, I do not know why members of the public cannot be trusted to interpret it properly or to have someone interpret it properly. It is a sort of paternalistic attitude to assume people will not use it correctly or view it correctly. I think the head has within his staff the resources to put any riders on the use of the information.

Mr. Sterling: I think section 11 is intended to put a legal burden on the government if some danger results as a consequence of not divulging the information. I have not formulated my own opinion; I was just interested in what you had to say about that.

Section 60, the overriding section on access, kicks into effect two years after the bill is passed. There is a two-year time span.

Ms. Patterson: Yes, and there is provision for reviewing the other pieces of legislation beforehand.

11:40 a.m.

Mr. Sterling: In Bill 80 I did the reverse and said that in dealing with confidential matters the specific legislation would have priority over this act. Would you find much difficulty in switching it around like that? I will tell you why. In my view, there is certain specific information that you might want to treat differently or the access to it differently.

The primary issue about which there is some political debate now is adoption information and whether specific sections of Bill 77 should have priority over this act. My tendency is to think that it may be better to deal with an act specifically when there is a problem dealing with that kind of information.

Ms. Patterson: Then you have a problem of this being a piecemeal attempt after all these other pieces of legislation have had their effect. If their access provisions are very limiting, you accept that and you do not get consistency across the system in favour of access. I would prefer that some other method be adopted to deal with specific problems such as adoption information. At the moment, I cannot think whether that would fit within any of the exclusions here, but there is such a broad range of things that are excluded I think they could.

Mr. Sterling: I do not have any objection to the review process. I think that process should take place. I am just saying in regard to the resulting product, where should the overriding body of law--

Ms. Patterson: I think the override has to be in this legislation because its function is to provide greater access than is provided in other statutes now. If there are specific limitations, they can be dealt with either through regulations being changed so institutions are not included under the act or through amendments if the exemptions are not already included. I would like to see this bill take precedence over other pieces of legislation, assuming the others are not more accessible.

Mr. Sterling: I understood that point.

Can I go to the review process? This partially deals with the role of the information commissioner. Do you believe the information commissioner should be making orders, or should he be making recommendations and then

somebody else should be deciding whether that information should be ordered to be divulged? It very much affects what the information commissioner does in a practical sense. Is he an advocate for the person who wants access to a public document or is he the guy who has the final hammer and says whether something will be divulged?

Ms. Patterson: I think he is the guy who has the final hammer; otherwise, we advocate that there be appeal provisions to the courts. As I understand it, that is the difference between the federal system and our system. The federal system has recommendations made by the Privacy Commissioner and then there are de novo appeals on most of the information refusals or allowances. In some specific limited instances, there is another appeal based on whether there were rational grounds to make the decision. If you do not have the commissioner making the decision, he is only making recommendations and he is in a very weak position. I see no reason why he should not make the decision.

Mr. Sterling: I am not saying there should not be another level in terms of appealing a refusal to follow the recommendation. I am not seeking to weaken the review process with regard to what the commissioner is doing. I have talked to the Privacy Commissioner in Ottawa and he feels he has a certain mandate. He can work with a citizen and act on his behalf.

In this process, it seems to go up to the commissioner, then he puts it down for mediation and then it comes back up to him. In the people's concept of the ombudsman-like role for the information commissioner, I thought it would be better to go to either the federal model or the Williams commission model, which is to have a board in between the commissioner and the court.

Ms. Patterson: We are getting down to the Attorney General's emphasis on quick and easy access. I would be willing to assume that the person seeking access could make representations to the commissioner and would act as his own advocate in a refusal by an institution head. The process then would be expeditious. That is my basic reason for advocating still that the commissioner make the decision.

Mr. Sterling: The last point is that in this act there is really no sanction on a head of an institution who does not comply with an order of the commissioner. I do not expect any head of an institution would refuse to follow the order of the commissioner. However, I wonder whether you have approached or thought about that problem. In other words, to enforce the order of the commissioner, you would still have to take it to the court and show that the head of the institution was in contempt of the commissioner's order. Am I not correct in that in the final analysis?

Ms. Patterson: I think you are, yes. I had not thought about that.

Mr. Sterling: Basically, we have an act where the information commissioner can say, "You produce that document," and the guy can thumb his nose and say: "No, I am not going to produce it. What are you going to do next?" He says, "I will take you to court." You can stall the decision for a period of time.

Mr. Haggerty: Lawyers would not do that, would they?

Mr. Sterling: No, I am not talking about lawyers. I am talking about heads of institutions, 150 of them, who may or may not be under the direct influence of government, although most of them would be. You have 150 heads

plus 24 ministers. You have 174 individuals who may act very independently of what the information commissioner does. It might be useful to have a sanction in it to make it an example as such.

Ms. Patterson: Yes, I agree.

Mr. Sterling: Some kind of fine or whatever. I would ask you to consider that. If you have any thoughts on that and would consider giving them to the committee as well, I would appreciate that.

Mr. Warner: I appreciate your very detailed and extremely thoughtful presentation. It is very helpful to me and, I am sure, to other committee members.

One of the things you mention is the inclusion of municipal corporations. Can you elaborate a bit in two areas? By the term "municipal corporations" are you including municipal councils per se, or are you referring simply to departments of municipal councils, i.e. the works department and whatever other departments or functions, public health and so on, that function as departments of a municipality, or is it all inclusive? Second, can you give me some examples where, in your opinion, it would be very useful for the public to be able to gain access to documents?

11:50 a.m.

Ms. Patterson: I had contemplated that this would be an all-inclusive provision. I am thinking partly of my own experience in attempting to get information from municipal councils. Even where they are supposed to be giving you minutes of their meetings, it is often difficult to get them under the Municipal Act. They are opening up to some extent, but they are created by provincial legislation and do have much more impact on individuals in many situations who find municipalities very difficult to get information from. I do not have any other specific examples that I have been thinking of, except their considerations of development proposals. Many of the planning staff's reports and recommendations are public, but if you are trying, for example, to put them in an historical perspective of what has happened over a number of years on a particular issue, it is difficult to get that information.

Mr. Warner: Yes. Perhaps in matters of rezoning, land sales, land transfers--

Ms. Patterson: Redesignations.

Mr. Warner: --redesignations, all those things where there is a concern on behalf of citizens, individuals or groups that an inappropriate behaviour has taken place but they do not have any evidence and it may be impossible to obtain papers that would be of assistance. In your understanding of the way this bill is structured, they are now not included.

Ms. Patterson: They would not, because in the definition of "institution," they are not included in the schedule.

Mr. Warner: The last thing I will ask goes back to the last point Mr. Sterling raised. I thought the Information and Privacy Commissioner would have the power to compel the release of the information where the head refuses.

Mr. Sterling: He does, but what if the head does not release it?

Mr. Warner: You mean after compelling it?

Mr. Sterling: If you order, what strength does that order have if you do not have any--

Ms. Gigantes: He would surely have a copy of what he is ordering, having reviewed it. How would he review it if he did not have a copy of it?

Ms. Patterson: Sometimes I think he has to go to look at it rather than bringing it--

Mr. Sterling: He does not necessarily have a copy of it--law information, in particular.

Ms. Gigantes: He has the right to all documents that he requests. Presumably, he can carry away a copy.

Mr. Warner: It is a point we need to clear up somewhere along the line. If you are right, then I, too, share a concern.

Mr. Sterling: Maybe we will ask counsel about that.

Mr. Warner: Unless counsel has a--

Mr. Sterling: Or the Attorney General.

Mr. Chairman: He would have the documents. They would physically be in his possession while he was reviewing them. I take it that whether he would release it or not would be his decision. He would not be ordering somebody else to release it.

Mr. Sterling: What does Mr. McCann say? Does he release the information or does he order the release?

Mr. McCann: Are we talking about the commissioner?

Mr. Sterling: Yes.

Mr. McCann: Subsection 48(5) says, "The commissioner shall not retain any information obtained from a record under subsection 4." The intent of the bill is that the commissioner is to make use of the record during the review, the inquiry, but then the commissioner is not to keep the record after it is over. The question of enforcing an order of the commissioner is a different question. I am not sure I have a complete answer to it today.

I do not want to walk the end of the plank, but the appropriate remedy under existing law for a failure to comply with an order of the commissioner would be to bring an application before a court. The mechanism of the court could then be brought to bear. One hopes it never comes to that but that is at least possible. It is a point that should perhaps be considered in more detail in clause-by-clause review. We would be happy to go into it in a bit more detail.

However, I do not think the intent of the bill, as it is drafted here, is that the commissioner becomes the source by which records are released to the public where the commissioner makes an order to release. That

responsibility is placed on the head of the institution. The commissioner has the power to order that it be released.

Mr. Warner: Your concern is well founded. The last thing is, in summary, when you look at the bill in its totality, both in your capacity with your organization and, I assume because of your presentation, in the wider context of beyond your organization, would you say this bill is too cautious in its approach to releasing the information?

Ms. Patterson: Yes. There is a general right to access to information, but it is so limited by the other sections that allow this discretionary refusal to allow access, that it is a real problem.

Mr. Warner: The Attorney General said he was looking for us to find the flaws and he was quite willing to tidy things up; that is what we will be doing.

Ms. Gigantes: First, may I go back to section 11? We had very forcible presentations yesterday from the Canadian Manufacturers' Association and the Board of Trade of Metropolitan Toronto. In particular, the manufacturers' association suggested to us that there was an enormous responsibility placed on us to ensure the behaviour of heads under section 11 was at least bounded in process to the extent that they would have to notify the third party, if there was a third party involved, in the application of section 11.

I suggested to them this was notice for appeal and delay. They said their object was not appeal and delay; it was only to make sure the heads understood completely the facts of the situation and followed that polite and necessary process of getting from the third party the context and understanding necessary before invoking section 11. What is your reaction to that?

Ms. Patterson: It is completely unwarranted. I was dealing with the same question with Mr. Sterling. Especially in the limited circumstances that are contemplated by the existing section, I do not see why you would have to notify anybody. As I said, it seems to allow less access than existing legislation, the Environmental Protection Act provision, so I do not see any reason they should be notified before the information is released.

Ms. Gigantes: Do you know of other legislation--you do not mention it in your brief--where the word "hazard" has taken on a legal interpretation?

Ms. Patterson: No. The place you would expect to find it is in the Environmental Protection Act, which does not use the word. As I said earlier, it takes a much broader view of what it is dealing with in terms of a wide range of impacts rather than only a hazard, however that is defined.

Ms. Gigantes: In their presentations to us, both groups we dealt with yesterday seemed to suggest "hazard" contemplated some emergency situation.

Ms. Patterson: That is exactly my point.

Ms. Gigantes: We asked them whether the passage of time would disqualify a hazard from revelation under section 11. They said that was not their intent, but I had difficulty understanding what their intent was when they explained it that way. On section 17, you made a very broad reference to

your concern. Is it possible for us to get a more specific suggestion from you, perhaps at a later time, about the changes you would like to see on that section?

Ms. Patterson: We could attempt to do that.

Ms. Gigantes: I am not asking you to give us a draft amendment but to indicate with a bit more precision what you are searching for here. I agree with what you are saying in general about the section.

Ms. Patterson: I would be happy to do that.

Mr. Chairman: Thank you very much for your presentation.

The committee recessed at 11:57 a.m.

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STANDING COMMITTEE ON PROCEDURAL AFFAIRS AND AGENCIES, BOARDS AND COMMISSIONS
FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

THURSDAY, MARCH 27, 1986

Afternoon Sitting



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Gigantes, E. (Ottawa Centre NDP) for Mr. Martel

Haggerty, R. (Erie L) for Mr. Morin

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Assistant Clerk: Mellor, L.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

Witnesses:

Individual Presentation:

Buttrick, Dr. J., Professor of Economics, York University

From the Ministry of the Attorney General:

McCann, S. B., Counsel, Policy Development Division

From the Association of Records Managers and Administrators:

Hnatiuk, E., Chairman, Canadian Legislative and Regulatory Affairs Committee

Hopkins, M., Member, Canadian Legislative and Regulatory Affairs Committee

From the Ontario Library Association:

Moore, L., Executive Director, Government Legislative Committee

Ridout, J., Chairman, Government Legislative Committee

Molson, G., First Vice-President, Government Legislative Committee

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON PROCEDURAL AFFAIRS
AND AGENCIES, BOARDS AND COMMISSIONS

Thursday, March 27, 1986

The committee resumed at 2:09 p.m. in room 228.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
(continued)

Consideration of Bill 34, An Act to provide for Freedom of Information and Protection of Individual Privacy.

Mr. Chairman: I call the meeting to order. We are ready to begin. With us this afternoon is John Buttrick, who is professor of economics at York University. It is exhibit 66 in your book.

Professor Buttrick, for your information, generally we like our witnesses to go over whatever they have in their briefs, make any additional comments they care to make and then members of the committee may have some questions.

DR. JOHN BUTTRICK

Dr. Buttrick: About how much time will I have?

Mr. Chairman: I think it will be half an hour.

Dr. Buttrick: That is a good deal more than I need.

Mr. Chairman: Good.

Dr. Buttrick: I come to you sort of by accident. Last fall, I went to try to get some information of a sort I had gotten about a decade ago on different schools in Metropolitan Toronto. I was denied it on the grounds that Bill 34 would prohibit my receiving this information. That did not seem believable to me.

Mr. Turner: That was even though Bill 34 was not in place.

Dr. Buttrick: That is right. I wrote to the deputy minister and got a letter back. Would the committee like copies of this letter?

Mr. Warner: I surely would.

Dr. Buttrick: I do not know if I made enough. I did not think I should include it with the brief because I understood the brief is available publicly.

I wanted the number of students, by school, who received diplomas. I did not want the names of the students or their addresses; I simply wanted the school and the number of such diplomas awarded for both grades 12 and 13. Although I did not ask the deputy minister, because if he denied me one he would deny me the other, I also wanted the number of Ontario scholars by school.

This is important information if you are trying to see how a school is performing by following students through the grades to see where they end up. You can follow them through the grades with respect to numbers because those data, arranged annually, are available publicly. The data I was requesting are not hard to locate; they are collected every year and exist in the ministry.

I was curious about why Bill 34 denied me admission. I got a copy of the bill and read it through. Because I am not a lawyer, I am not sure exactly what clauses were used to deny me this information. As you can see, it was not specified in the letter. It might be clause 17(1)(c), which says, "result in undue loss or gain to any person, group, committee or financial institution or agency." It could be that a school is viewed as a group, but I am not sure. Certainly the exceptions were apparently not enough to break through the barrier that was erected against it.

That is how and why I came here. I hope this committee can discover some way of preserving privacy, which I think is quite important and indeed essential, while at the same time providing information that is important not only for research but also in this case, I would argue, for a lot of other purposes.

One would be for the students and parents who have to choose a school and where they are going to live in terms of this school. I am sure they would like to know the differences between and among the schools. This is information that is available in the ministry but not elsewhere. Probably, members of the school boards would also like to know. At present, they cannot get this information. It is a little odd, but they cannot. I suppose legislators, who are not privy to data in the ministry's hands, might want to know. I suppose taxpayers might, because it would be useful to know how their money is being spent and what they are getting for it. It appears to me there are very strong reasons in the public interest that such information should be made publicly available.

I would go further than that and argue, although not in connection with education separately, that in general I hope Bill 34 is not used to deny the collection and arrangement of what are referred to as longitudinal data. These are data that take individuals by groups and follow them through to see what happened after they left school, as they switched jobs and went on through life. One gets a synthetic history of a group of people. Only in that way can we find out how a society is functioning and where there may be difficulties and problems. It concerned me a great deal that this bill was used to deny information that would be essential at the start of such a longitudinal series.

I hope this committee will take that into account and can manage an amendment to the bill so one can, in a sense, have one's cake and eat it too; that is, arrange it so strangers cannot look at individual information, but none the less, in terms of groups of people, they can follow through and see life experiences and how one thing leads to the next in so far as that is possible.

I cannot give you any suggestion on how to do this because I am not a lawyer; I am a simple economist.

Mr. Turner: That is even better.

Dr. Buttrick: There are a lot of lawyers in this group, so I think you can handle that problem for yourselves.

I would like to make one further point which I mentioned in my brief. In a couple of cities, not only has this stuff been made public but it also has been made readily available by being put in the newspaper. In parts of New York City and Minneapolis, reading and math scores are published by school.

Mr. Haggerty: The city of Buffalo does too.

Dr. Buttrick: Does it?

Mr. Haggerty: Yes, they are advertised in the paper.

Dr. Buttrick: Boy, does that make a difference. In the two cases I know of, the reading and math scores in the schools jumped across the whole system; the schools started competing with one another a little bit. I am not all in favour of competition, but sometimes a little bit helps and this may be a case where a little would help. Essentially, the schools would be induced to improve performance in consequence of the sort of information that, in any event, should be made public.

That is the end of my pitch. If you have any questions, I will be pleased to answer them.

Mr. Chairman: Before we get started, there are a couple of obvious things. Did you get an explanation from the deputy minister as to how he operates under a law that does not yet exist?

Dr. Buttrick: No, I did not speak with him over the phone; I spoke with somebody else.

Mr. Chairman: The written response is signed by the deputy minister. I still am somewhat taken aback that a letter would go out from a deputy minister's office indicating they are operating under a law that does not yet exist. At that level, they are supposed to have some clue as to when a bill becomes a law.

Dr. Buttrick: I am sorry, but I cannot help you.

Mr. Chairman: You said in your brief that you made a written request to the ministry.

Dr. Buttrick: Yes.

Mr. Chairman: At some time, could we see a copy of that? Did you retain it?

Dr. Buttrick: Good heavens, I hope I can find it; I am not positive.

Mr. Chairman: If you could, we would appreciate it.

Dr. Buttrick: I am not even sure I kept a copy, although I suppose one should.

Mr. Chairman: This is rather amazing.

Ms. Gigantes: The ministry must have a copy.

Dr. Buttrick: I am sure it will.

Mr. Chairman: I am not sure they would reply to us.

Dr. Buttrick: I anticipated no difficulties. I spoke to a person in the office in the Mowat Block who said, "No, you cannot have it." I said: "That is unbelievable. Who would I write to?" I wrote a letter and, after some delay, I got back this reply. That is all I can tell you about it.

Mr. Chairman: The only reason I am interested in seeing your letter is that I assume you did it on letterhead from the university and you used your name. Therefore, it would be pretty clear that this was someone with an interest in research and who has some credentials. It is not someone looking for information he might use in a malicious way. You do not look like a malicious person to me.

Mr. Treleaven: Dr. Buttrick, I will share with you an experience of mine that occurred within the last two weeks. First, I am a lawyer and an MPP.

Mr. Turner: Do not boast about it.

Mr. Treleaven: I will try to hide it. I wrote to the Minister of Colleges and Universities (Mr. Sorbara), who is also the Minister of Skills Development, on behalf of a constituent who has a business in building truck trailers. He was interested in hiring more staff. I inquired on behalf of my constituent for the recent graduates in the Oxford-Woodstock area who hold truck trailer mechanics' certificates or diplomas.

Mr. Chairman: Are lawyers not eloquent?

Mr. Treleaven: I am not sure of the exact names of the diplomas.

Mr. Turner: I can tell.

Mr. Treleaven: I got a similar letter, signed by Mr. Sorbara, stating that information could not be released to me. I have no answer. I just wanted to share with you that I am in the same boat as you, and it was the minister who advised me to get lost.

Mr. Turner: Did he say that?

Mr. Treleaven: Not yet.

2:20 p.m.

Mr. Warner: I am going to have to change my opinion; the minister may have sound judgement there.

Dr. Buttrick, I appreciate what you have brought before us. It is very disturbing on two counts, and I would like to pursue it a little bit.

From the response you got I take it that not only are you denied, according to the deputy, with respect to Bill 34, which is before us, but also under the present situation, setting aside Bill 34, the government is able to deny you access to this information without supplying reasons.

Dr. Buttrick: I believe that to be true.

Mr. Warner: They did not give you any reasons.

Dr. Buttrick: No. When I did get such information about a decade ago, I had a \$2,000 grant from the Ministry of Education which was necessary to pay for some computer tapes. I was on sabbatical leave with a research scholarship at the Ontario Economic Council. That may have been the reason it was so easy to get it last time. I got information I do not believe people should have. I got a data tape on grade 12 students that gave their addresses.

Ms. Gigantes: Oh.

Dr. Buttrick: It is quite true. I did not have their names. Of course, I used it only to find out the enumeration area in which they lived to block things together. People should not have that information unless it is authorized, but this information I am requesting now is not of that character.

Mr. Warner: The message is that people should get a government grant first to get their hands on the information.

Dr. Buttrick: It certainly helps. That is the normal way you go about it. There is a difficulty with that approach, however. If you write a report in consequence of a government grant or for a government contract, the government can decide what to do with it. I did not write one in that way. The report I then wrote is in the public domain. I do not believe in writing things that end up private.

Mr. Warner: I share the same puzzlement and concern that the chairman has expressed. I do not know how on earth anybody thinks one can operate under a bill that has not become law. That is weird. Perhaps it is incumbent upon this committee to have a letter go to the office of the Premier (Mr. Peterson) saying deputies should be informed that they are not to function under bills that have not become law. That is a fundamental principle of a parliamentary system, but obviously someone does not recognize that.

The final question is also disturbing. Suppose for a moment that Bill 34 has been passed. This ministry is saying that by way of Bill 34 it does not have to release this information to you. That part of it concerns me. You identified section 17--

Dr. Buttrick: That is a guess.

Mr. Warner: I wonder if staff has an idea of which section would apply.

Mr. McCann: I prefer not to comment on a letter I have not seen before and do not know anything about. However, Bill 34 is not quite as woolly headed on this subject as might appear.

Section 21, which deals with releasing personal information to someone other than the individual whom it concerns, has a rather elaborate clause (1)(e) regarding research purposes and the entering into an agreement satisfactory to the responsible minister dealing with maintaining the confidence of the information, removing the personally identifying information as soon as possible and so on.

The bill does accommodate the concerns Dr. Buttrick is raising, at least in part. There has to be some process of negotiation of the terms of the contract. I say that in the context of Bill 34. I know nothing about the Ministry of Education and its policies on information.

Dr. Buttrick: I did not ask at any time for individual information.

Mr. McCann: I recognize that, but the bill addresses the problem of the possible release, if I can put it that way, of personally identifying information by saying there should be an agreement that sets out the terms and conditions so everybody knows and so there can be security for the people to whom this information relates that it will not be inadvertently released. I am sure you would--

Dr. Buttrick: I would never have had it. All I wanted was the number, 23 or 17 or whatever the number was for that school.

Mr. Chairman: Is the committee as interested as I am in getting an explanation from this deputy minister of what the hell is going on?

Ms. Gigantes: Yes, but also from the other deputy ministers. I would like to know how widespread this practice is currently in all ministries in Ontario.

Mr. Chairman: Not to explain, but to report, I have had similar things when you ask for specific names of graduates. I understand their reluctance to release those lists. I think a combination could have been found, but if it is the will of the committee I will be happy to ask the clerk to seek a response from the deputy minister. If that is the way in which Bill 34 would operate, that would influence my judgement on the matter.

Mr. Warner: There are three parts to that question, to which it is fairly obvious we need a response. Under what current situation does the deputy feel he can reject the request? Why is there an assumption he can operate under Bill 34 when it has not been passed? Under what section of Bill 34 does he feel the request can be denied? Those are the three questions.

Mr. Chairman: We will ask them to provide us with general responses to what we were elucidating on.

Ms. Gigantes: There is another question. It is my understanding that if an application is made under Bill 34, which this is not, the applicant has the right to know the reasons, not simply: "Because of Bill 34, we do not give this out. You had better go and ask the school. We will give you the form to ask the school." He has a right to know the reason. He has a right to be able to question the reason at that level without having to run around asking what forms he should be applying with.

Mr. Chairman: Are we generally agreed on that?

Mr. Haggerty: Mr. Chairman, I wish you would take a look at the letter. I do not want to defend anybody in any particular area, but the letter indicates in the second paragraph, "It is not possible to release to the third party information which can be identified at the school level without the written consent of the schools concerned."

Ms. Gigantes: That is personal information.

Mr. Turner: That is not what he was asking for.

Mr. Haggerty: No, but he was asking for information. If you want to get any information from a student or if you want to go back and get a copy of

his diploma from a high school, elementary school or whatever it may be, you can write to the Minister of Education, but you do not get it from him. The way the act is set up you have to go through the local school board. It has the authority in that area. He is saying here that until you get consent from the school board, the information will not come forward.

Dr. Buttrick: Incidentally, the members of a school board cannot get such information.

Mr. Haggerty: I am surprised. I have gone into this with the Niagara South Board of Education. It has been very helpful. It can go back into the records of almost everybody who was in school some 40 or 50 years ago.

Mr. Turner: Of their own records.

Mr. Haggerty: That is right.

Mr. Bossy: Not the school board. I served all those years on a school board, and the school board itself could not give the information.

Mr. Haggerty: No, but the school does.

Mr. Chairman: We will seek some clarification from the minister's office as to what is going on.

Mr. Haggerty: If you go back to section 21, that is what he says. It is consistent with the act itself. There has been first reading. He did not say it was law.

Mr. Turner: Except the act is not in force.

Mr. Haggerty: That is right.

Ms. Gigantes: The way this letter is framed suggests that the school is a person and that the request for information is a request for personal information about the school. Therefore, you have to get the school's authority to release it. That seems to me to be twisting Bill 34 beyond belief.

Dr. Buttrick: There are an awful lot of schools even in Metropolitan Toronto.

Mr. Chairman: Ms. Gigantes, are you finished?

Ms. Gigantes: That is it.

Mr. Haggerty: Under the Education Act, it is there. They will not deny it unless there is some pertinent information that may relate to such things as health and personal family matters, but if you want to get a diploma, every year the Ministry of Education sends me the list of honour students, the ones who have graduated.

Dr. Buttrick: They do? That is good. That is what I wanted.

Mr. Chairman: That is what surprised me. Not only are the lists published, but they are sent--

Dr. Buttrick: It is not by school.

Mr. Chairman: They are not widely distributed, but they are sent, for example, to the members.

Dr. Buttrick: By schools?

Ms. Gigantes: No, not by school; it is by riding.

Dr. Buttrick: By riding.

Mr. Treleaven: All Ontario scholars.

2:30 p.m.

Mr. Chairman: I can speak only for myself. In my area I get a listing by schools.

Mr. Treleaven: I have seven high schools and I get them all.

Mr. Turner: So do I.

Mr. Haggerty: Even the private high schools? I would like to have those.

Mr. Chairman: Any further questions from any of the committee members? We thank you for appearing. We stirred up a little interest here.

Mr. Warner: Thank you. You were extremely helpful.

Mr. Chairman: The next witnesses this afternoon are from the Association of Records Managers and Administrators. Mark Hopkins is a member of the Canadian Legislative and Regulatory Affairs Committee and Ted Hnatiuk is the chairman. Gentlemen, as we have done with previous witnesses, you are at liberty to share whatever information or opinion you want with the committee and then, as you just saw, it will start to disintegrate into something akin to questioning. Go ahead.

ASSOCIATION OF RECORDS MANAGERS AND ADMINISTRATORS

Mr. Hnatiuk: Ladies and gentlemen, thank you for the opportunity to present this brief on Bill 34 on behalf of the Association of Records Managers and Administrators. As mentioned in the background to the brief that we submitted, ARMA is mainly involved in the field of information, specifically in the field of what they today call information resources management. That means how to best locate information, file information, set retention schedules, ensure that information is protected for government reasons and for administrative reasons and ensure that it is disposed of in the shortest possible time to make businesses or governments economical.

The organization is approximately 8,000 strong in the United States and Canada, and we do have affiliates in other parts of the world. We are talking on behalf of approximately 400 to 425 records managers, spread within four chapters in Ontario.

We have been pretty heavily involved with government on many issues, mostly at the federal level. One example might be that we started the initiative within the office for the reduction of paper burden back in 1980, to pull together the information on governments' requirements for the retention of records.

Lawyers, records managers and taxation people within business and accountants supporting small businesses spent much time trying to find out what information they are required to keep for government purposes. Then, of course, when they did find it, it was very vague and incomplete; so we carried out a project with this office to see that the government pulled it together and published a handbook. It then got carried forward through the office for the co-ordinator of regulatory reform. They were trying to use this as a thrust throughout the provinces to obtain the same sort of initiative.

In the meantime, Ontario heard about this initiative, jumped on it and beat the federal government in producing a handbook and making major improvements in this area. We worked very closely with the government, to the point where Management Board of Cabinet had us in here to listen to the announcement that this legislation was being put through.

Last March, on another front, we sponsored a consultation on the admissibility of recorded evidence in Ottawa for the federal government. This was a follow-up to a federal-provincial initiative where they developed a new evidence code that just never got through. We put this consultation on with most of the computer and information experts present--the Canadian bar, etc.--produced a report and put it in. This is being worked on by the federal government right now, and we hope to see a new evidence code at some point in the future.

That brings us to today to where we have taken a look at Bill 34. We have used some people who have been very closely involved with the Access to Information Act at the federal level. This gave them a base from which to work.

I personally am with Imperial Oil Ltd., and I have headed up a task force on the subject of records management with the computer people in the United States. We have taken a look at the subject worldwide, trying to find how to better manage information.

I will let Mark Hopkins bring you up to date on himself. He has spent time with the public archives. He is now working here in Toronto and has been heavily involved in most of the initiatives I have talked about and in others we will not mention at this time.

In closing, we feel we have a close feeling for the management of information, the interests of members of government and within business. We really support this initiative and would like to put forward the recommendations that we will review this afternoon.

Mr. Hopkins: My background includes working at Public Archives Canada in Ottawa, in various positions in private and public sector records and in office automation and computer systems from 1974 to 1985. In the fall of 1985, I was a successful applicant for a position with the municipality of Metropolitan Toronto where I am currently employed as director of records and metropolitan archivist.

The views Mr. Hnatiuk and I are presenting today represent the views of a professional organization in the information management business. They do not necessarily reflect the views of either of our employer organizations.

We have commented on many sections of the act. We were pleased to receive the comments of the Attorney General when he was at the committee hearings on Tuesday. Some recommendations we have made have been confirmed in

his comments. I was interested to note in his comments that he was looking for advice on fine-tuning. When I look at the comments we are making today, this is a bit of what we are doing. We do not have any real disagreements with the thrust of the bill. From our background in the information business, we are suggesting some ways of fine-tuning.

It is interesting to follow on the heels of the previous speaker who commented on automated research. We will be making some comments about that later on in the bill.

Our first series of recommendations, 1 through 5, deal with section 2 of the bill. They are primarily definitional.

Before I start that, we have a summary of the recommendations pulled from the commentary--in other words, concise recommendations only. Where necessary we have added a word or phrase to flesh out the comments when they are separated.

The first part of recommendation 1 has been answered; the Attorney General has provided a list of the institutions. Beyond that, we suggest that this government extend the principle it has identified in the act, which is public access to information essentially supported by taxpayers. We suggest this principle be extended to organizations which receive at least 51 per cent provincial funding and to the municipal level. Since municipalities are created by the province, this would mean that all levels of government in Ontario would be covered by some statute dealing with access and privacy. We suggest that a phase plan be developed to extend it to other areas which are provincially supported financially and organizations created by the province.

2:40 p.m.

Moving to our second point, this deals with definitions of personal information. The definitions are quite clear and cover many important aspects, but we think it would be helpful to indicate that this is personal information regardless of the source, whether it is from a first party or through another party who has collected the information and is filing it with the government. I think it is the intent of the act to do this and it should be identified as such.

We are also suggesting the definition of personal information from the privacy protection side have a duration to it. Failing that, I do not think you will have an archival record, which would be quite a shame. That touches on some of the concerns of the previous speaker.

In recommendation 3, the definition of a record, we are saying: "Let us keep it simple. Let us just describe it as information." It is interesting that in the federal statute on this issue there is a full-page, single-spaced schedule attached, listing every conceivable documentation one can imagine in 1986 and probably anticipating things to come down the pike. I wonder if that is necessary. The definition that already exists in the Ontario Evidence Act is quite a good one. Our organization dealt with that at some length when we were dealing with the admissibility of computer printouts at the federal level in the consultation to which Mr. Hnatiuk referred previously.

In recommendation 4, we would like to see that definition of a record extend to all statutes and regulations of the province. When one starts to do a quick scan through all the statutes and regulations, and I am not suggesting

we have done this in detail, there are so many that refer to books of account, instruments, rolls and so on. Those definitions reflect the state of the information in the world at the time the original drafting occurred. I think it is time to bring all those definitions up to date. Perhaps an omnibus inclusion would do that.

In recommendation 5, still dealing with records, there should be a distinction made among the records of people such as yourselves who represent a constituency or party or personal activity. You will have those in your office and you will also have other official records that reflect perhaps a ministerial or committee function. To have some balance in the act, the personal, party and constituency stuff should be excluded. They should not be defined as government records.

In recommendation 5(B), when material is donated or sold, we have identified the Archives of Ontario here, but in looking at the list of institutions that came out during the Attorney General's comments, perhaps that should be extended to things such as the Ontario Agricultural Museum. I do not know exactly what its collecting mandate is, but it may very well collect documentary material as well as museum artefacts. Although we have identified the Archives of Ontario as an individual institution, wherever the principle applies, it should be extended. It is quite normal in the archival world to negotiate contractual rights dealing with access to records. That should be a continuing principle.

Moving on to section 10 and the terms "control" and "custody," I have identified in the commentary a problem that cropped up in the United States when Mr. Kissinger removed transcripts of telephone conversations which reflected business for which he was being paid as a public official. He controlled access to them. What we are suggesting is that control of information should be defined to include the authority to grant or deny access and/or to transfer or destroy records, and that the control exists regardless of who has physical custody. With that definition, it is my suggestion that you do not need to refer to custody at all.

Extending that definition to recommendation 7, we start to see some application of control. We suggest anything that is created as a government record should be covered by government regulations.

Many of the comments we are making get to the heart of proper and efficient management of information. We started in this section by saying that to give people meaningful rights of information, certain administrative safeguards have to be put into place. Regulations are needed to prevent information from unwarranted destruction, alteration, cleansing or alienation. These regulations need to be in effect right through the life cycle of information to its ultimate disposition. With regulations like that, you will start to put some flesh on the bones of public access.

Recommendation 8 relates to section 17, which is obviously a very contentious section, and the disclosure of corporate information. We find that the word "significantly" creates confusion and uneasiness in many people. We would like to see some kind of test developed as to what "significantly" means.

We also suggest that the personal information safeguards of section 38 be applied regardless of the source of the information. In applying the act, section 17 should differentiate between information provided voluntarily and information filed as a mandatory requirement. Any rights of access to this information should be defined in the act requiring the filing. It will clarify

it for those businesses that do file information with the government. For information filed voluntarily and identified by the business filing as proprietary, the business should be notified prior to any release and have rights of appeal on contesting that release.

Recommendation 9 continues with section 17, and the issue of data linkages starts to come up. The previous speaker referred to that and legitimate anonymized research. With this recommendation, we are trying to strike a balance between access and privacy in computer research and information that is traditionally open to the public. We recognize there are some potential problems with the ability of computers to make links on different files and to manipulate them, whether for an original or a derivative purpose. At the same time, there has to be some balance to allow legitimate research, as the economist identified.

Information currently released as single-entity information must be available only on an individual basis under Bill 34. One of the direct concerns that was expressed to us in preparation of this brief was that if an organization filed information under a security provision, a lending institution in particular, it would not want to see a competitor be able to come in and do a computer search on people who had a mortgage of more than \$100,000 and then go out and solicit them and shift that business away.

Recommendation 10 relates to section 19 dealing with solicitor-client privilege. We suggest that a test be put in place. I found in the archival area that once you tell someone about solicitor-client privilege, a great veil or shroud of secrecy goes over it all. In some cases, it is appropriate that such a shroud exists, but not always. We suggest the general interest of public scrutiny versus the need for secrecy should be the guiding principle in any decision with respect to access to solicitor-client information. The bill already has provisions for severability which should be applied to privileged communications.

2:50 p.m.

Recommendation 10 deals with section 21, and we find that the exceptions are quite reasonable. We have already expressed in recommendation 9 comments on data linkages. We want to emphasize that with anonymization of data, legitimate professional research can be undertaken. We get into a little bit of the nuts and bolts of it here. We suggest that by separating the actual data from the personal identifiers, one can start to achieve that.

We also suggest certain penalties that are appropriate in a research environment. The linkage of personal information should occur only under strictly controlled conditions, including for research projects. All data used or produced should be anonymized to protect individual privacy and appropriate penalties should be established. In other words, with researchers, you could have a fine equal to the research grant, and they should be aware of that as a penalty. Another penalty could be revoking the right to publish. If you indicate in the regulations a sample contract that would permit anonymized research, it would go a long way to ensuring that legitimate research continues and that privacy is protected.

On section 32, the Attorney General suggested a change that is similar to our recommendation (A), with a single minister responsible for the access publications as is the case for privacy publications. He is described as producing one fully indexed compilation. We should ultimately have some clarification on the contents of this. Some very good qualities are identified

already in section 32. In addition to those, we suggest a linkage be made between the classes of records and the responsibilities and programs or functions; in other words, put the information into its context in the organization.

Next is our recommendation 13. I think I understand what subsection 35(1) means. It took me a lot of reading to come to that understanding. It could use some improved language. We talk about personal information and records in the definition. There should be clarification on information that is not recorded. This is a situation where police officers start to canvass for opinion and have not yet created any notes. I am somewhat at a loss to see how one grants access or controls privacy on that. I leave that for the drafters of the legislation.

Recommendation 14 is a very significant one to make efficiency of information management equally strong on both sides of the field--on the public sector and the private sector side. When the government collects information, it should clearly indicate how long that information will be retained and what its ultimate disposition is. It would help business to know how long the government retains that information.

Subsection 37(2) deals with quantitative research. The major problem I have with this is that institutions should be keeping information that is valid and accurate; otherwise, it is historically research related. We suggest that distinction be made. If it is necessary for institutions carrying on their operations to deal with research material, then they should deal with it as research material but not for operational purposes. That just does not seem to be good information management.

To give that point of view some reality and to communicate to the people dealing with information that this is an important consideration and relates to efficiency, we suggest a standard of accuracy should be part of the privacy commissioner's review of information holdings. They may not be all that frequent, so let us include it in internal audit reviews, as would be quite feasible within that context.

Moving on to our comment in recommendation 16 dealing with section 41, we are again suggesting a little bit of fine-tuning here; clause 41(g) should be changed by taking that group of things and making them specific items of discrete information statements instead of allowing them to be collapsed together. We are also suggesting a little additional wording in clause 41(h), that the data sharing practices applicable to the system be included in that. We are ultimately suggesting a little reordering.

In recommendation 16(d) we suggest that the terms "data bank" and "system," which are used somewhat interchangeably, be clarified and that, within the state and trends in manual and automated handling of personal information, it would be useful to define "system," "bank" and "sub-bank" and to use those terms consistently when appropriate in organizing and describing information holdings.

We are suggesting in recommendation 17 that no fees be charged for individual requests for personal information. In other words, if I want to know what the government has, I do not think I should be billed by the government when I have made my request fairly precise--unless, of course, it becomes vexatious and I keep writing every month and asking for the same information.

The next few recommendations, 18 to 25, are not directly related to particular sections, but they do relate to the issue at hand.

Recommendation 18 has already been identified as a change by the Attorney General.

Recommendation 19: Regulations passed pursuant to this act should establish mechanisms for protecting the public's rights to government information when that information is created or maintained as a result of activities between different levels of government. If the government gets into shared responsibility programs, in your relationships with other levels you will identify how that information is going to be managed. We are talking here about information management.

In recommendation 20, we are suggesting that public access rights not be frustrated except on very clear grounds, that for the most part the issue be resolved in favour of disclosure and that the burden of persuasion must lie with the opposing party.

Recommendation 21: Technological and financial barriers that reduce or restrict universal accessibility to information must not be tolerated unless it is absolutely impractical to remove such barriers. Delivery of information to the public should be timely and reasonably priced. A person requesting access should not be penalized for any inefficiencies in government information systems.

By "technological barriers" we mean we think you will find that, as time goes on, more and more information will reside in what is called on-line, in computer systems, in office automation environments and in various computer databases. Some of these systems may be used for what are called ad hoc reports rather than for regular reports that are an ongoing product of that computer system.

In that situation, the institution might very well say: "We generally do not provide that information. We are going to have to put in some extra staff time to provide it." If we wanted some information, we would just ask the system and we would be told. I would see that as a technological barrier that might very well stand in the way. That is what we are getting at with this recommendation.

In recommendation 22, we do not think information holdings should be secret even if they are exempt.

3 p.m.

Recommendation 23: It is important to make a distinction between what is factual information and what is opinion information, and the way those two types are handled should be different, particularly in computer systems. It is certainly feasible to store them separately in computer systems. For example, with a numeric code you could indicate various data about a student and hold the index that relates the student to the code somewhere else. In other words, you could take the codes of various student records, relate them and do some data analysis without ever knowing who the individuals were. If there is a need to know, you have the index and it is stored separately.

In recommendation 24, we think the commissioner should be given penalties for noncompliance, to put some teeth in the commissioner's office.

Recommendation 25 relates very much to the efficiency side of things. We suggest there should be schedules for all recorded information and there should be penalties when records are destroyed in an unauthorized way or retained longer than they should have been under the records schedule.

We have some additional considerations that again relate to the act but may be at arm's length from it. To have a good, efficient information system in the government, there is some additional legislative work required which relates to the role of provincial archives. We suggest a new archives and records management act would be useful to ensure information is properly managed in the government and there is a documentary heritage maintained in a world where we move more and more to office automation equipment and perhaps produce less and less paper. That has quite an impact on an archival program.

Speaking to recommendation 27, for retention scheduling to occur in a meaningful way and for the provincial archivist to have a role in maintaining a documentary heritage, the provincial archivist should be given the same rights to review records and equipment status as the Information and Privacy Commissioner.

I have touched on recommendation 28 a bit already. In an office automation environment, it may be necessary for the provincial archivist to be able to acquire copies in an appropriate medium. In other words, if the department can exist with the information in an on-line environment and it resides there even as a permanent record, it does not contribute very much to an archival heritage. That will have to be reflected in a changed archival function.

In concluding our remarks, I will talk a bit about the information environment in the private sector. In many of the organizations in which our members are active, we see a sense of moral stewardship about information arising. Part of the impetus for this comes out of the Organization for Economic Co-operation and Development guidelines and multinationals doing business in various countries around the world and moving a lot of information around. Certain political jurisdictions have to conform to these. We find there is more interest in voluntary compliance with those guidelines. I suppose the only thing that retards a more rapid advancement is a concern that it might affect a competitive position.

There certainly is a trend in both private and public sectors to improve information systems, reflecting access and privacy principles, guidelines and laws. We support the initiatives of the bill, are willing to continue any consultative role necessary and appropriate and want to see sound information management policies developed by the province.

Our members view access and privacy of legislation as embodying practices which will ensure efficient and effective use of information resources. Information when needed for identifiable purposes will be collected by those with approved responsibility to do so; it will be used only for such purposes, maintained for an established time period and disposed of in an appropriate manner. This act requires good information management, which we believe will be a saving and not an additional cost, as efficient government is cost-effective government. We support and encourage the efforts of the government to establish a model system for managing information and making it available, if and when appropriate.

Thank you very much.

Ms. Gigantes: I would like to thank our presenters for a very fine brief. It will take us a lot of work to take advantage of the number of guidelines you have set for us in reviewing this legislation. It is most welcome.

To your knowledge, are there members of your organization who are employed by Ontario Hydro?

Mr. Hopkins: Yes, there are.

Ms. Gigantes: Did you have the benefit of hearing their brief to us this morning?

Mr. Hopkins: No.

Ms. Gigantes: They told us it was going to be impossible--not impossible but an enormous burden--for them administratively to be able to cope with this act and that they have a system now of providing information on public request. They feel that the structure of this legislation, which would require them to provide all relevant documents when satisfying a public request for information, is going to be enormously complex, burdensome, costly and unnecessary.

Mr. Hnatiuk: If I may respond, Workers' Compensation Board and Ontario Hydro within the Toronto area chapters have the largest group of records managers. Following the ad in the paper, you can appreciate there was not much time to pull people together to do too much in the way of review with members. Therefore, what we did was select members from various organizations we thought would be heavily affected. I am not sure if we overlooked Ontario Hydro, but we got a fair cross-representation from approximately 10 different types of organizations.

To respond to Ontario Hydro's concern, as I might see it, I can appreciate that they might have trouble, but I know they spend a fair bit of money on records management within Ontario Hydro and are fairly well computerized within many departments. As a matter of fact, one of their members talks across North America about their computerized records management system. I do not know specifically what their problem is, but if they stick to their records management practices, it should not be impossible.

Mr. Chairman: They may have to take that guy off the road for a year or so, so that they can comply with--

Mr. Warner: Get him back home.

Mr. Hnatiuk: As I say, not having heard it, I cannot appreciate what the problem might be.

Mr. Turner: I think it was a legal opinion actually.

3:10 p.m.

Mr. Hnatiuk: As chairman of this legislative and regulatory affairs committee, I took it upon myself to set as an objective for ARMA about a year ago the promotion of these OECD privacy guidelines. I had our company look at it. On the surface, it looks as though we need it already within the human resources department. Now I am going to move into the area of the effect on

retail customer information, that sort of thing. Having talked to various organizations, I do not see a problem in getting into that particular area.

To go back to Ontario Hydro, given a good records management system--and they seem to be spending a good bit of money on records management for good reasons--the business they are in and the criticality of information in the nuclear environment--they should be able to segment the information as required.

Another point of interest which came out in our brief, which we are going to be recommending to member companies and any companies, large or small, is that they should clearly identify the information they are concerned about. This is one area where Imperial Oil did an especially good job to make it easy for the federal government.

As a matter of interest, I had our law department and controllers carry out a review of the federal Access to Information Act within our own company. We could not come up with any complaint other than, when they wanted information, they said 25 days; our people felt in a company of our size 30 days would have been better. I was surprised I did not find any significant problems. Second, we broadcast to the member companies of ARMA to ask for concerns and we did not get any back. That may have been complacency, but generally we may have hit an area of concern.

The reason I mention the federal act again is that many of the recommendations here for good records management have been carried out in the federal area. It has been in for a while and we have not sensed too many problems. If that does not answer your question directly, I am sorry I have taken so long.

Ms. Gigantes: It answers my question wonderfully.

Mr. Hopkins: I would like to comment on that as well. I spent a fair bit of time thinking about it this morning. I must have heard a comment on the radio or something. That remark actually contradicts what we have said in our brief and that concerns me.

I would want to know whether Ontario Hydro's concern is real or imagined. I would want to know whether its concern lies on the access or privacy side. On the privacy side, in terms of its own employees and its human resources system, it should be able to meet anything in this act. Does the Royal Bank of Canada accept the Organization for Economic Co-operation and Development guidelines?

Mr. Hnatiuk: They are on the verge.

Mr. Hopkins: The Royal Bank put out a policy paper recently. I have not seen it, but I have been told it is very close to the OECD guidelines with respect to client information. With that from a client, how can Ontario Hydro claim a good information management practice that satisfies many multinational corporations and major financial institutions is impossible for it?

I can see a problem on the access side. As a covered institution, if it were required to get into severability, for example, it would go through a file. I have seen it happen at the public archives in Ottawa. In answering a request, peoples' names had to be deleted or sections of the file had to be closed. There is a cost in that.

However, in the context, if Ontario Hydro wanted to get power out of Douglas Point, it would have to go through all sorts of environmental impact assessments. There must be an enormous cost to that. I am sure Hydro has a raft of staff people defending the various positions or analysing the data to put forward reasonable positions for public discussion. With the magnitude of the investment Ontario Hydro would have in that activity, I cannot imagine that dealing with severability of files and getting reports together would add enormously to the cost. Hydro may be able to demonstrate that to you. It would be interesting.

Ms. Gigantes: I am heartened by your comments.

Several questions have been raised in my mind and I would love to be able to ask them. I think the quality of your submission is such that it deserves a lot of attention. You say in recommendation 5 there should be an exemption for private records. It was suggested to us by the archivists' association that perhaps we could put a time limit on that.

Mr. Hopkins: Was that the Ontario Association of Archivists?

Ms. Gigantes: Yes.

Mr. Hopkins: I had an opportunity to scan their submission briefly on the weekend, although not in great detail. For the most part, the recommendations they make are in keeping with the thrust of the things we are saying here. They have identified certain sections we have not addressed, such as law enforcement records, executive council material and so on.

If I as a citizen donate my records or you as a politician donate or sell your records to an archive, we should have the opportunity to negotiate the appropriate access conditions, whether they relate to just viewing the records, copying them or some control over publication. There is a wide range of conditions which could be negotiated. If the archivists cannot convince you that your requirements are excessive and unreasonable, they can refuse to take your records, and perhaps they should. I would say to leave that to the parties to negotiate.

Ms. Gigantes: Good.

In your recommendation 6 you suggest very strongly that we should have regulations in place at the time of the proclamation of the bill. What you are calling for here is that we know what those regulations are and we approve them, consistent with your recommendation, before this bill comes into effect. That expresses some concern about what happens if we do not.

Mr. Hopkins: You need the regulations to put the context to the bill. That is going to be the nuts and the bolts of the bill. It gives direction to your staff, your departmental administrators, about what they must do to meet the requirements of the bill. It is typical of any situation. You define the policy and then you do the procedures.

Ms. Gigantes: It looks to me from our previous submission as if the regulations may already be in place.

Mr. Hopkins: I do not understand your point.

Ms. Gigantes: From the Ministry of Education. That is of concern.

In recommendation 8 you have suggested splitting up voluntary information which is provided by private concerns and mandatory proprietary information which has to be filed with government. Are you suggesting that mandatory proprietary information be subject to access?

Mr. Hopkins: No. I do not think the proprietary information that is mandatorily brought in; in other words, the company does not have a choice.

Ms. Gigantes: Why do you divide them? If neither is to be subject to access, why do you suggest it is important that we specify they be divided?

Mr. Hopkins: The division starts with which act covers it. Is it the act that makes the filing necessary or is it the access act? You have some exceptions. Subsection 17(2) gets into the exception area. In the exception area, if you file voluntarily and it is proprietary information, we are saying it should be identified as such. That is the key, but it is up to the business. The onus should be on the business. If I come in as a consultant and say to the government, "I have a razzle-dazzle piece of computer software which I will explain to you; this is what it is going to do for you," and it is unsolicited business--

Ms. Gigantes: Yes. You are saying we should spell out in the legislation that there are obligations on the people who provide information to government to separate--

Mr. Hopkins: Yes. We will give an example.

Mr. Hnatiuk: Mark asked me to give the live situation within our company.

Mr. Hopkins: This is under the federal act.

Mr. Hnatiuk: Yes.

Although an individual act might stipulate the access provisions, we have said to all departments that submit information to the government: "The onus is on you to indicate whether you feel it is proprietary regardless of which act you may be operating under when you are putting in voluntary information. Do not assume that will protect you under that act. Identify the information as proprietary."

That sets up the provision that we would be informed if someone felt he had to release it. In this case, we are trying to set up that protection for individuals, companies or whatever it may be. If for some reason a government decides the information must be released to a third party, at least there is a communication back to the party saying it will happen.

Ms. Gigantes: I am trying to discover who the onus is on in this recommendation of yours. Is your interest in having private corporations follow certain procedures or is it in having the government responsible for filing the information in government records in a certain manner?

3:20 p.m.

Mr. Hnatiuk: Doublecheck me here. Your first statement is what I am personally looking for, a notation in the act that the people putting in the information should identify it as proprietary if deemed to be such.

Ms. Gigantes: The onus is on them.

Mr. Hnatiuk: The onus is on them when it is voluntary information.
Mr. Hopkins, I am not sure what the other members had in mind beyond that.

Mr. Hopkins: That is correct.

Mr. Sterling: You are saying that section 17 would not kick in unless "confidential" was written across the top of a business piece of information?

Mr. Hopkins: That is correct.

Mr. Hnatiuk: Unless it were covered under another piece of legislation and yet voluntary.

Mr. Sterling: Do you not think that is an undue burden to put on particularly small businesses which may not be as sophisticated as the larger endeavours and which are attempting to comply with government regulations in providing information? It may or may not be mandated by statute or regulation and, therefore, would be deemed voluntary.

You are putting a price on the knowledge of the submitter. What will happen with IBM Canada Ltd. and Bell Canada is that everything will be stamped. It will be automatic, unless the document is clearly a public document that they have produced. Do you not think you are penalizing the smaller guy who does not have the resources to know about this law but is trying to comply with the government and help it along in forming policy?

Mr. Hnatiuk: How then would government decide that voluntary information should not be released, unless you told the donor to indicate such?

Mr. Sterling: You would go through the same type of hearing in front of the Information and Privacy Commissioner to decide whether the public good outweighs the privacy of the information.

Ms. Gigantes: We are asking about what triggers notice to the third party.

Mr. Chairman: As professionals in the field, as Mr. Sterling indicated, does that entail expense from your point of view? It strikes me that they would come in and fill out some forms and somebody would ask, "Do you want this as confidential or is this open season?" It seems to me there is no expense involved in that. As people who manage records, are you talking about a major expenditure of funds for a small company?

Mr. Hnatiuk: I do not think so, whether large or small. The approach taken within our company was to keep it simple so people did not have to say, "I am protected under the taxation act," or "I am protected under that act." The instruction is simply that if you feel that information is proprietary--and, by the way, very little is stamped--for whatever reason, it is not difficult to identify what you would rather not move on. Even a small company should be able to decide that and stamp it. You are correct in that they may not know it. However, if it is made quite clear to the accountants whom they would normally use to support them, they could be made aware of that situation.

Mr. Chairman: If they do not know it, would it not be preferable to inform them and force them to make that decision--in other words, inform them that at some time this information might be released?

Mr. Hnatiuk: Yes. I am not sure what mechanism you would use. It is voluntary now.

Mr. Chairman: Yes.

Mr. Hnatiuk: I am not quite sure how they would be informed.

Mr. Chairman: Tell them. Send them a simple notice, a letter, saying, "The information you are supplying us with may be made available under Bill 34 at some time."

Mr. Hnatiuk: The cost of that process will have to be the decision of the people within government.

Mr. Hopkins: In the environment of the example I have given of an unsolicited bid, you have made a fair enough supposition. That is the way you do business with the government. It may be a new rule, but it becomes an acknowledged, understood and accepted rule.

Mr. Chairman: From my simplistic point of view, it should not be hard to inform people that if you put in a bid, if you provide information to government, you should be aware that we have a Freedom of Information and Protection of Privacy Act here and that it may at some time become public knowledge. You then choose whether you want to participate in the process.

Mr. Hopkins: I agree. The principle can be extended to the addition the Attorney General made on labour relations as well. If either party wants to submit additional information in an unsolicited way to the arbitrator, let it indicate that it is proprietary.

Mr. Sterling: That would be waving a red flag in terms of the kind of information you would get back from small business on a voluntary basis.

Mr. Chairman: You may be right, except that it would be only fair to tell them.

Mr. Sterling: I think so too. You have to have it one way or the other.

Mr. Chairman: I would not want to be the minister who engaged in some great trade mission, when at the end the little corporation from Kincardine that participated, but did not know all this, got very upset that information it provided became public knowledge.

Ms. Gigantes: You will be giving them information that they can get notice if they identify the information they are giving as proprietary. They can get notice and go through any kind of appeal they wish, go through the regular appeal if they wish, if there is an indication somebody has asked for the information. What we are talking about here is the giving of notice.

Mr. Sterling: It probably becomes a practical problem only where large numbers are involved in terms of the government identifying a whole raft of companies. If you want to deal with this, an application or something should be made to the Information and Privacy Commissioner at that stage about

the kind of information for which you are trying to get an exemption on sending notice to all these different parties. For instance, if it is a piece of information about 5,000 companies or something of that nature, go to the information commissioner and say, "Is this a detrimental thing to do?" and not notify these 5,000 companies.

Mr. Chairman: In a sense, it is not so different from a public tendering process. People who submit tenders to do a job are aware that the information they supply, the costs they put into their tenders, can be made public. They know that is part of the process. It might be quite different from business between two corporations that might be trying to underbid somebody.

Ms. Gigantes: In recommendation 15, you referred to the need for internal audit reviews. Would these be carried out by the reporting bodies, by ministries, by agencies?

Mr. Hopkins: I am not thoroughly familiar with the provincial government and its internal administrative structure in the various government departments, but I rather expect that in many departments there are internal auditors. We are saying that to ensure information is not being kept around that is of no value, information that is old, dated and inaccurate, this is another thing you would add to the checklist of an internal audit procedure. It is not that the Provincial Auditor has to come in and do this on a regular basis; that would be a bit excessive.

Ms. Gigantes: It triggered my recollection of what we were told this morning by Ontario Hydro. They go through audits of different divisions. They said that to be asked for information about those audits would jeopardize their whole organizational operations. For example, we were told there was an audit of their law division some time back and if that audit had become public knowledge, they would have been in a situation where in subsequent audits people would not be willing to say the truth about what they felt about the proficiency of the law division. This is not what you are talking about.

Mr. Hopkins: No. We are saying that in an internal audit, whatever component of an institution it is should just add this sort of thing to a checklist. It is not going to be something they run across often anyway. We are saying some of these things should be built into the regular administrative procedures. They are fairly easily included and fairly easily done. With the concern of Ontario Hydro that you have identified, is it covered by an exemption from the bill? If it is not, should it be? That would be the way to approach that.

3:30 p.m.

Ms. Gigantes: In recommendation 21, you talked about technical barriers and on-line information. That raises a whole area of modern record keeping that you have also identified as an archival problem. What kinds of limits would you put on requests? Right now, for example, if I go to Statistics Canada and it has collected information but does not have a computer run on it, I have to pay for it.

Mr. Hopkins: You have identified something that occurs now to a certain extent. Our concern is we do not want to see it extended because it will disadvantage the less than well-funded researcher. In other words, if you have a lot of money for research, then you can pay for the computer run. If you have not, does that immediately preclude you from information?

We are moving to a world where there is more and more on-line database information, and here I have a personal concern. If I disagreed with a major corporation and we both were making submissions to a committee such as this, the corporation could do all sorts of database searches, pull together all this information and put together a solid brief. And here I am, working away with my little ballpoint pen at the local library. What an imbalance that is.

Mr. Haggerty: David and Goliath.

Mr. Hopkins: Yes. In moving towards automation and accepting it as part of our social and intellectual environment, we have to plan for situations such as those. I cannot make a specific recommendation that this is the fix on it. However, with respect to how the charges are to be allocated and levied against researchers, this sort of thing should be kept in mind. You should be planning for the future when you make decisions of that nature.

Ms. Gigantes: What you are suggesting to us is that very important records will not be accessible because they are kept in an on-line system.

Mr. Hopkins: That is right. That puts a slightly different focus on the question if you are addressing it from how to protect an archival record. The archives of the on-line environment have to work quite differently. I will give you an example, if you will just bear with me for a moment.

A number of years ago, a joint program on minimum income analysis was funded by the federal and Manitoba ministries of health with about 16 million. In a period of restraint, the federal health minister terminated that program after an expenditure of about \$12 million. The program quit about a year early. The participants in this program would fill out a four-page questionnaire on a monthly or quarterly basis and identify all of the various incomes. Some of them had temporary jobs, some seasonal work and so on. There were very strict controls on privacy in that agreement.

At the tail-end of the agreement they realized that they had an enormous amount of useful information. They were not going to be able to properly research it because the program had been terminated early. They made an approach to Public Archives of Canada for permission to microfilm the information. It would have been very easy to microfilm because the personal identifiers appeared on a standard spot and a template could have been put under or over it.

It was going to cost \$120,000 to microfilm that information but because there was no money at the tail-end of the project, it did not go. Compared to the funding of a \$12-million or \$16-million program, \$120,000 is peanuts. If that had been identified at the start, valuable information could have been saved. Similarly, in an on-line office information environment, if the archivist identifies information as being archivally valuable as a potential research item, the archives will have to have the resources to capture that information. It may be on microfilm or it may be taking a copy to optical data discs. There is a variety of ways it can be done, but I think it has to be done. It is best if identified as part of the needs in planning for a system.

Mr. Sterling: That is a very salient point. Last week, this committee was looking at state legislators with respect to the kinds of computers and information they have provided in their state legislatures in particular. This committee should look to adding a section to the act which perhaps would allow this committee or a committee of the Legislature to demand certain kinds of information and certain kinds of packages.

For instance, the chairman brought up at that meeting that if we want to find now a certain program is doing, the information should be collected and stored in such a manner that it is not an enormous task to spill it out. It is not only the public that is interested in research. If we as legislators have to have the proper tools, we should take this point very seriously for ourselves in calling the government to account for what is happening.

Right now, information we get, even empirical information, is not very timely. We have to wait until a brochure about quarterly finances is published, which is usually three months later. There really is no excuse for that if basically all the information is in a table two months before. It should be able to produce it, bang. As well, you would get more accountability from the government. I am interested in any formal suggestions you have as to how that kind of thing would be drafted.

Mr. Hopkins: I am not a draftsman. I agree with your point. All these points that have been mentioned touch on each other. You are looking for a precise answer to how to best reflect that in the legislation and I do not have it right now. I will think about it.

Mr. Sterling: I am interested in finding out what the total is.

Ms. Gigantes: You suggest in recommendation 25 that we make mandatory the scheduling of all reported information. This misses me completely. This is something different from the index you suggested be correlated with the programs for which information is being gathered. I can understand that. What additional scheduling are you talking about?

Mr. Hopkins: We are referring to the identification of how long information is kept and how it is disposed of.

Ms. Gigantes: You mean time scheduling?

Mr. Hopkins: That is right. That is a term in our business. We have records retention scheduling and it usually breaks down into how long you keep it in an active office environment and how long in dormant storage in a records centre, basement or somewhere; then do you pulp it, burn it or send it to the archives?

Ms. Gigantes: Thank you very much.

Mr. Warner: I have a couple of questions, but I will hold them in the interests of time.

First, I want to thank you for a very impressive presentation. It has been extremely helpful. Because I find your experience and approach to the bill to be extremely helpful, would you be amenable to our contacting you later as we go through this bill? If you are agreeable to this, we might get back to you later.

Mr. Hopkins: Yes, we are. I will give some thought to your earlier question.

Mr. Sterling: I, too, would like to thank you for a very detailed presentation. You have obviously done a lot of work on it. I appreciate it.

Mr. Hnatiuk: I would like to throw one comment back. Being familiar with Frank's background in the government, clearly he can close the gap

between the records management program we are recommending, where they are today, and what it would mean to get there. I have no idea myself, but there is one person who would be very valuable in this area. I am sure you know that.

Mr. Chairman: Thank you very much.

The next group before us this afternoon is the Ontario Library Association. John Ridout is the chairman of the government legislative committee. Gerda Molson is first vice-president and Larry Moore is the executive director. For those of you who have not had the thrill of being before a committee, essentially we give you an opportunity to go over your brief or make whatever comments you want. Subsequent to that, the members of the committee attempt to ask questions. You are on.

3:40 p.m.

ONTARIO LIBRARY ASSOCIATION

Mr. Moore: I am Larry Moore, executive director of the Ontario Library Association. In our brief, we express our interest as a very broad one. We represent libraries in colleges, universities, public libraries and school libraries, so access to information is our business, but at a different level--in the grass roots.

I would like to introduce Mrs. Molson who is first vice-president and chief librarian of Niagara-on-the-Lake Public Library, which is involved with the database, and John Ridout, who is chairman of our legislation committee and a trustee. Mrs. Molson and I will confine our involvement to the reaction stage, and Mr. Ridout will look after our presentation.

Mr. Ridout: Mr. Chairman and members of the committee, I should start by advising you that my middle name is Sterling--oh, he has left.

Interjection: We will not hold that against you.

Mr. Ridout: The previous speaker referred to the "little old public library." We have on-line equipment and databases, so we are not little old libraries.

Mr. Chairman: It is all right. My wife is a little old librarian.

Mr. Ridout: Personal congratulations to the framers of the bill who put in the table of contents. It is very helpful. I had a lot of difficulty with the federal bill because it did not have a table of contents and you had to find your way around.

Exhibit 75 is our brief. You have had it for a little while so I will pick out only some of the points we would like to stress. The Attorney General (Mr. Scott) must have read it also because he has acquiesced to a number of our recommendations already.

We endorse the principle of the bill and on page 3 we make a point of specifying the agencies. I think the Attorney General has agreed to this. I am not sure whether he will put it in the legislation or whether it will be a schedule to the legislation, but at least he has come towards that opinion.

We recommend two separate commissioners rather than having one commissioner to handle both freedom of access and privacy. While the Attorney

General does not support us in this, we note the Canadian Bar Association--Ontario is supporting us on that proposal. We are not really in agreement with Mr. Flaherty's submission. He wants two deputies under one commissioner; one deputy for each. We feel that would not be sufficient splitting of the roles.

We support the commissioner ruling on the question rather than just recommending, as the commissioner does in the federal legislation. We think that is a good feature.

Some of us feel the exemption list is too lengthy. We favour a reduction in the number of exemptions and we hope the current processes will stay in place. We note the Attorney General has picked up that recommendation too. He appears to be allowing for the present processes to continue.

We would like to see the time to publication shortened. We feel this may be used as an excuse to delay the provision of the information. We also ask that there be only one delay allowed. Knowing how printers are, the excuse that "It is coming from the printers" could be used again and again and there would be a long delay. We feel the people should be able to get the information in draft form if necessary rather than having to wait for the publication if it is severely delayed.

We find the severability in section 23 difficult to follow and we suggest that subsection 33(2) be a model for the wording of that section. It deals with government manuals but it is a comparable section.

We are pleased to see that the government is going to be supportive of applicants for information rather than taking an adversarial position. We think that is going to be very helpful.

We feel that sections 31 to 34 are very difficult and note that the Attorney General has picked this up and is proposing a revision to section 32 to allow for combined material. Section 33 refers to separate lists, and we think he should look at that as well. The federal publication is all in one book, and it is much more helpful that way. We support all of that being put together. We also support a subject index. The federal one again is very helpful; you can pick up almost any word and find the references to it in the index. As a library body, we believe that subject-topical approach is good.

We are interested in supporting the educational features in this bill. In the federal commissioner's special report, she notes that a number of the information officers in the department are not familiar with the act. We feel that not only is public education necessary but also education of the information co-ordinators in each department, so they will not fall over the provisions in the act.

We are interested in distribution being more directly addressed. The federal book on access goes to all public libraries, and the Ontario one should do no better than to go at least to public libraries and college and university libraries. There are other people who should get it too, but we are not pushing that because it is not in our purview.

We would like the continued provision of department manuals, and it appears the Attorney General is supporting that recommendation. We suggest rewording of section 32 to make it similar to section 5 in the federal legislation. It is a way of making sure the manuals are available.

The matter of appeal in part IV is our first separation from the Attorney General. He does not favour appeal, but we are pleased to note that the Canadian Bar Association supports appeal on the substance as well as the commissioner's actual jurisdiction to rule. There have been only a few appeals in the federal legislation, and they have all been on behalf of applicants; so the argument that the government could use the appeals as a delaying tactic does not hold water as far as our experience with the federal act is concerned. The commissioner may be the finest person in the world, but he or she is not infallible, and we think there should be provision for an appeal of his or her ruling.

3:50 p.m.

We hope there will be little need to resort to the courts, and the federal experience bears that out, but that last resort seems to be useful. If the matter of funding is a problem, I am sure the newspapers would be willing to take a matter to court on behalf of a person if they were sufficiently interested in it, so it may not be necessary for the little man to try to appeal.

We support the attempt to reconcile views rather than establishing an adversarial arrangement. In that sense, we like the idea of the mediator, although we are not quite clear on the role. We assume the main purpose is to try to come to a reconciliation without going to the commission and having a hearing.

We are interested in a waiver of payments on inquiries by tax-supported institutions such as libraries. We feel they should not have to pay the charges because they are already supported through the taxation system.

We feel the information commissioner should be proactive, publicizing the act and making it well known. The federal commissioner mentions in her special report that she tried to get it in the federal act that she should be responsible for education. It was not put in the act and, in a sense, she bewails the fact that she does not have that function. Ontario has a chance to put that in now and give the commissioner the power to give education on the act.

That is all I want to stress. We are prepared to answer any questions.

Mr. Warner: Thank you for your presentation. Do you have any observations you would like to share with us on whether there should be an expansion of the area covered by the bill and specifically whether municipal councils and/or departments of municipalities, which in some cases might cover libraries, should be added as jurisdictional areas for the bill?

Mr. Ridout: We would be interested in that. We are anxious to get all the information we can. Normally, the library has a pretty good relationship with the municipality and can get the information. However, if it were statutory, it would be a lot more helpful.

Mrs. Molson: I agree absolutely. As administrators in public libraries, we try as much as possible to maintain very good relationships with the municipalities so the information produced by them becomes available to us. However, nothing says they have to make it available to us. It would be very helpful to have it within the act that they too are covered by it and that there is freedom of access to the information they produce. As you probably realize, in most cases, citizens in the community are much more

interested in that kind of information, because it is so personal to them, than in much of what is covered by the legislation under provincial or federal jurisdiction.

Mr. Warner: That is right; it is a very good point.

Mr. Ridout: It would be good quid pro quo because, under the Public Libraries Act, we have to make information about our budgets available to the municipalities. We would be glad to get that back.

Mr. Warner: Fair is fair.

Mr. Chairman: Are there any other questions from members?

Ms. Gigantes: As you see the coverage under the bill now, a citizen could not make an access request directly to a library about its operations. You said you report your budgets.

Mr. Ridout: At present.

Ms. Gigantes: However, you have other information which presumably would be internal to your institution.

Mrs. Molson: I am sorry, what was your question again?

Ms. Gigantes: How would you feel if the legislation applied to the public libraries of Ontario?

Mrs. Molson: In the new Public Libraries Act, there are only two types of information that are not available to the public upon request. That was covered in the new Public Libraries Act.

Ms. Gigantes: What kinds of information are not available on request?

Mrs. Molson: Personnel records. I think the other one has to do with acquisition of property, in the same way it would apply to a municipality in that it could go in camera for those kinds of things. If we were in a position where we were looking at purchasing some land or property, that would not be accessible to the public. Those are the only two types of information the act does not specifically say must be available to the public.

Ms. Gigantes: Would you consider it a matter of private information if a citizen made a request to find out how many requests had been made for what kinds of books in what neighbourhoods? You would have on your files a lot of information about the borrowing habits of individuals.

Mr. Moore: Absolutely. To make available to another member in this room what you are borrowing from the library obviously would be an invasion of your privacy. At the moment, there is a phrase in the Public Libraries Act about personal matters. At this point, we are putting it into that category, but no one has tested whether that is what is covered by such an instance. At present, we definitely feel that information is not available. It is like health records; it would be an invasion of your privacy.

Mr. Chairman: For example, you would have a lot of information about what types of books are used a great deal in the children's section, what types of materials are used in the adult section, and whether it is fiction or nonfiction. You would be buying on the basis of that kind of information. That would certainly be public.

Mr. Moore: We would have no problem with that kind of thing. It is when it comes to the individual and when we would be saying what he is borrowing. There have been cases of that already in various jurisdictions, not necessarily in Ontario. For example, what is Mr. Keegstra borrowing? It could be used against him or against someone else who might have similar sympathies. Obviously that is a great danger.

Mr. Moore: Our computerized circulation control system gives us general information to help us purchase books. I do not see any reason why that could not be made available--the number and types of fiction that are borrowed, how often and that sort of thing.

Mr. Chairman: I think that is true. The last time I was in the Oshawa Public Library, it struck me there now is a computerized record of every book I take out of that place.

Mr. Warner: That is right.

Interjection: They all have big pictures.

Mr. Turner: And whether you return them.

Mr. Moore: The security of that information is a great problem.

Mr. Newman: In the data you collect concerning an individual who takes books from the library, do you keep records of parents, mother and father, and their ethnic or religious background?

Mrs. Molson: Absolutely not. It is name and address only.

Ms. Gigantes: Do you usually ask age?

Mrs. Molson: We ask the age only if a person is under 14.

Mr. Chairman: I have one other question. You took a swipe at the cost thing, which a number of groups have done. We have looked at that in other jurisdictions. I think most of us are of a mind that the cost should be minimal, if any. It would be reasonable to presume the government is going to incur some expense. It knows that. It is getting information officers or access officers or whatever they are called ready. The troops are being lined up. It knows or projects it is going to cost X dollars in the near future.

I wonder whether it is a reasonable assumption to say: "We now have a law that allows you to get this information. It is not going to cost you anything more than a minimal amount until such time as we establish there is some great abuse of the system." Is that a reasonable way to proceed?

Mr. Haggerty: You are not suggesting lawyers would abuse it, are you?

Mr. Chairman: Look at the Centers for Disease Control in Atlanta. One of the things they brought forward was that this had not been thought about under their legislation. After the fact, they had to take staff off certain projects and put them on the gathering and vetting of information, the preparation of computer tapes and all that. They had not thought about it beforehand. We would have the advantage of being at least conscious that it is going to be a cost item.

The problem we have is that we would like to provide it at minimal cost.

Until such time as we see a clear abuse, where somebody is making daily requests on a large scale, then turning around and marketing that information as a consultant or something, it seems to me to be reasonable to keep it minimal.

Mr. Ridout: The libraries have been in favour of information for nothing since 1882.

Mr. Chairman: Public libraries are a socialist plot. Are there any further questions? We thank you very much for your presentation.

The committee stands adjourned until the first Thursday upon the renewal of the session.

The committee adjourned at 4 p.m.

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